

105+214

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-17337-2022 (O&M)

Date of decision : 29.08.2022

Sunny Kumar

.....Petitioner

versus

State of Punjab and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. J.S. Jaidka, Advocate
for the petitioner.

Mr. Arun Luthra, DAG, Punjab.

RAJESH BHARDWAJ, J. (Oral)

CRM-30178-2022

Application is allowed as prayed for.

Annexures P-4 to P-7 are taken on record.

CRM-M-17337-2022

Prayer in the present petition is for grant of regular bail to the petitioner in case FIR No.45 dated 09.03.2021, under Section 376 IPC and Sections 3 and 4 of The Protection of Children from Sexual Offences Act (Amended) 2012, 2019, registered at Police Station Division No.6, Police Commissionerate, Ludhiana.

As per the facts of the case, the complaint was lodged to the police by the complainant who is the mother of the victim wherein it was alleged that her daughter i.e. victim is 14 years of age and about 05 months ago, Sunny son of Singhasan used to come to her house to impart tuition to her daughter. On 08.03.2021 at about 08:30 PM, she along with her children was present at home and gave message on telephone to her

daughter to come to collect the practical book. Her daughter went to bring the book and thereafter, did not return. They kept tracing her but failed to trace her out. She came back on 09.03.2021 at about 03:00 pm and disclosed about her rape committed by Sunny. She was left at home by Sahil and his wife. The complaint was lodged to the police to take the legal action against the culprits. Resultantly, the FIR was lodged, investigation commenced, her statement under Section 164 Cr.P.C. was recorded and she was medically examined. The petitioner was arrested on 09.03.2021. He approached the learned Additional Sessions Judge, Fast Track Special Court under POCSO Act, Ludhiana praying for grant of bail. However, after hearing counsel for the parties, learned Additional Sessions Judge, Fast Track Special Court under POCSO Act, Ludhiana declined the same vide order dated 21.03.2022. Aggrieved by the same, the petitioner is before this Court praying for grant of regular bail.

It has been contended by counsel for the petitioner that the petitioner has been falsely roped in this case. He has submitted that the allegations made in the FIR are false and frivolous. He has further submitted that the prosecutrix as on date is 17 years of age and the petitioner has no criminal antecedents whatsoever. To buttress his arguments, he has placed on record the testimonies of the material witnesses i.e. the prosecutrix and her parents who have been examined by the trial Court as PW-1, PW-2 and PW-3 respectively. He submits that the prosecutrix, her mother and father have appeared before the trial Court and have not supported the case of the prosecution and thus, on the request of learned Public Prosecutor they were declared hostile. He submits that the co-accused has already been granted bail by the learned

trial Court. He has submitted that once the prosecutrix and her parents have not supported the case of the prosecution, further incarceration of the petitioner is totally unwarranted. He has submitted that even otherwise once they are examined, the petitioner is not in a position to influence the prosecution witnesses as well.

Learned State counsel however, has opposed the submissions made by counsel for the petitioner. He has submitted that the prosecutrix was minor at the time of the occurrence. He has further submitted that after recovery, she was produced before the Magistrate for recording her statement under Section 164 Cr.P.C. wherein, she levelled allegations against the petitioner. He has further submitted that she was medically examined and the FSL report is awaited. However, he candidly acknowledged that material witnesses i.e. prosecutrix and her parents have not supported the case of the prosecution. He submits that in all there are 19 prosecution witnesses, out of which, 03 witnesses already stand examined which include the prosecutrix and her parents. However, he submits that as per the report, the petitioner is not facing prosecution in any case except the present case.

I have heard counsel for the parties and perused the record.

The petitioner is behind bars since 09.03.2021. The prosecutrix and her parents have been examined as PW-1, PW-2 and PW-3 respectively and have not supported the case of the prosecution. Perusal of their testimonies would show that the prosecutrix deposed that she has seen the accused for the first time in the Court. She further deposed that she never made any statement to the police against the

accused. Similarly, her parents also deposed in the same lines. There is nothing on record to show that the petitioner has any criminal antecedents.

The trial would take sufficiently long time in its conclusion. The veracity of the allegations would be assessed by the trial Court only after the conclusion of the trial. This Court would refrain from commenting anything on the merits of the case. However, in the overall facts and circumstances of the case, this Court is convinced that the counsel for the petitioner succeeds in making out a case for grant of regular bail.

Accordingly, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail/surety bonds to the satisfaction of the concerned trial Court/Duty Magistrate. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

(RAJESH BHARDWAJ)
JUDGE

29.08.2022
m. sharma

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No