

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

204

CRM-M-21679 of 2021 (O&M)

Date of Decision: 14.01.2022

Sanjay Kumar

.....Petitioner

Vs.

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. G.S. Jagpal, Advocate
for the petitioner.

Ms. Jasleen Sidhu, AAG, Punjab.

RAJ MOHAN SINGH, J. (Oral)

The case has been taken up for hearing through video conferencing.

Petitioner seeks grant of regular bail in his second attempt under Section 439 Cr.P.C in case bearing FIR No.11 dated 12.01.2019, registered under Sections 376, 506 and 354 IPC and Section 4 of POCSO Act, 2012, at Police Station Tibba, District Ludhiana.

CRM-M-20811 of 2020 was got dismissed as withdrawn on 06.01.2021. FIR was registered at the instance of Ashutosh Tewari who alleged in the FIR that his minor sister-in-

law was with his family for the last 3 years and was studying in the school. The petitioner was having an evil eye on the minor and he used to tease her. Despite objection by the complainant party, the petitioner did not mend his ways. On 03.01.2019, at about 7.30 pm, wife of the complainant was present in the house and was working on the ground floor. The minor victim/prosecutrix was in the room at upper floor. The petitioner entered the house and the room of the victim. When the complainant arrived at the house and heard the noise of the victim, the complainant went to the first floor and saw the petitioner running from the room. The girl was crying. On inquiries, the girl was confused and perplexed and was not telling anything. The girl asked the complainant to send her to her parental house in the village. The complainant took the girl to Uttar Pradesh to her parental house. After few days, the girl informed the complainant that on 03.01.2019, the petitioner had forcibly committed bad act with her. The FIR came be registered with this background.

The victim was medico legally examined on 13.01.2019 by Dr. Surbhi Singhal. According to medico legal report of the victim, she was found to be conscious, well oriented to time, place and person. On oral examination, no bleeding, no discharge, no mark of injuries on the whole body

were found. Hymen was found torn and healed. Blood sample for DNA test of the prosecutrix was not taken. The doctor pleaded ignorance about blood sample of the accused having been taken for DNA comparison or not. The doctor further stated that life of sperm is only 72 hours and dead sperm even can be found after 72 hours from the body of victim.

Learned counsel for the petitioner further submits that the petitioner was arrested on 04.04.2019. The charges were framed on 29.07.2019 and till date, prosecution evidence has not been concluded. Trial will definitely take long time.

At the time of withdrawal of first petition, only six prosecution witnesses were examined out of total 15 prosecution witnesses.

Learned counsel further refers to the cross-examination of the complainant Ashutosh Tewari while appearing as PW-1 in which he has admitted that prior to the incident, the petitioner had moved a complaint against the complainant party in the police station as the parties were earlier involved in the business. The complainant party used to bring shawls from the petitioner for embroidery and stitching purposes and the accused used to pay money to the wife of the complainant for the job work. In this regard, there was a dispute between the parties and the matter was reported to the police

and the said fact has been admitted by the complainant.

After examination of the last witness on 09.08.2021, there is no progress in the trial and the petitioner is in custody since 04.04.2019.

The factual position of the case has not been disputed by learned State counsel, however, learned State counsel opposed the grant of bail on the premise that the victim is a minor and she could not tell the factum of rape committed upon her on 03.01.2019 due to her tender age. She could tell the fact only after reaching her parental house and the FIR came to be registered thereafter on 12.01.2019. The trial could not make any head way due to the situation arising of pandemic Covid-19.

Having heard learned counsel for the parties, I find that the complicity of the petitioner on the basis of the facts and circumstances of the case would remain debatable as the FIR has been lodged after delay of 9 days. The petitioner is in custody for the last more than 2½ years. The trial of the case has not made any substantial progress. Keeping in view the present situation arising out of pandemic Covid-19, trial of the case may get further delayed.

Looking to the aforesaid facts and in view of the situation arising out due to COVID-19 pandemic and without

adverting to the merits of the case, I deem it appropriate to enlarge the petitioner on regular bail.

In view of above, petition is allowed. Petitioner is ordered to be released on bail, subject to his furnishing heavy bail bonds/surety bonds to the satisfaction of the trial Court/concerned Duty Magistrate.

Nothing expressed hereinabove would be construed to be an expression of opinion on merits of the case.

14.01.2022
D.Bansal

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No