

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(225)

CRM-M-20485-2022
Date of Decision: 03.08.2022

Balvinder Singh

--Petitioner

Versus

State of Haryana

--Respondent

CORAM:- HON'BLE MR. JUSTICE RAJESH BHARDWAJ.

Present:- Mr. Uday Partap Singh, Advocate for the petitioner.

Mr. Kirpal Singh, A.A.G., Haryana.

RAJESH BHARDWAJ.J (Oral)

The present petition has been filed under Section 439 Cr.P.C seeking the benefit of regular bail to the petitioner in case FIR No.288 dated 28.11.2021 under sections 308, 323, 354, 376, 452, 506, 34 I.P.C (later on sections 308, 452 IPC were deleted and sections 307, 325, 511 IPC were added) registered at Police Station, Ismailabad, District Kurukshetra.

As per factual matrix, the FIR in question was lodged by the prosecutrix (name concealed) wherein it was alleged that she was 20 years old and studied up to 7th class. Her mother had died. Accused Balvinder Singh was her neighbour. He used to keep an evil eye on her. In the night of 27.9.2021 when she came out of the house, petitioner enticed her away and thereafter made physical relations with her against her wishes. Due to fear she did not disclose the same to her family members, however, on 27.11.2021 at about 8 PM he again compelled her to accompany him but she raised alarm. When her family members resisted he gave a blow of Gandasi from the reverse side on the head of her father namely Raj Kumar.

When her family members intervened he gave injuries to them also. FIR was lodged to take legal action against the culprit.

Investigation commenced and the statement of the prosecutrix under Section 164 Cr.P.C was recorded and her medical examination was also got conducted. Though, initially the FIR was registered under section 376 IPC and other sections, however, during investigation sections 308, 376, 452 IPC were removed and sections 376 read with section 511, 325 and 307 IPC were added in the case. Petitioner was arrested on 17.12.2021. He approached learned Addl. Sessions Judge, Kurukshetra for grant of bail, however, after hearing the parties, the same was declined vide order dated 16.4.2022. Aggrieved by the same petitioner has approached this court for grant of bail.

Learned counsel for the petitioner vehemently contends that petitioner has been falsely implicated in the present case. He submits that initially the FIR was lodged for the offence under section 376 IPC, however, the prosecutrix changed her version in the statement recorded under section 164 Cr.P.C. He submits that when the challan was presented the offence under section 376 IPC was replaced with section 376 read with section 511 IPC. It is submitted that not only this, after the commencement of the trial the prosecution examined the material witnesses i.e. the prosecutrix, injured Raj Kumar and other witnesses as PW-1 to PW-6. Counsel has placed on record copies of their depositions recorded by the Trial Court. It is submitted that all these material witnesses have not supported the case of prosecution and hence they were declared hostile. Counsel submits that the victim as well as the injured also did not support

the case of prosecution and thus the case of the prosecution fall flat as the prosecution is left with no credible evidence to prove its case against the accused. It is submitted that in all there were four accused and rest of the three accused are already on bail. Counsel submits that as all the material witnesses have been declared hostile, further incarceration of the petitioner is not warranted and thus he deserves to be granted bail.

On the other hand, learned State counsel has opposed the submissions made by counsel for petitioner. He submits that there are specific allegations against the petitioner. He has caused injuries to the family members of the prosecutrix and the same were declared dangerous to life and hence section 307 IPC was added in the FIR. However, section 376 was converted into section 376 read with section 511 IPC. He candidly acknowledges the fact that all the material witnesses have not supported the case of the prosecution and thus they have been declared hostile.

I have heard learned counsel for the parties at length and have gone through the records carefully.

Admittedly, petitioner is behind bars since 17.12.2021. In all there are four accused and rest of the three accused are already on bail. Besides this all the material witnesses have already been examined. They have not supported the case of the prosecution and thus have been declared hostile. As per the information provided by learned State counsel there are total 12 prosecution witnesses in this case, out of which 6 have been examined. This court would refrain itself from commenting on the merits of the case, as the allegations and counter allegations would be assessed only after evaluation of the complete evidence led by both the sides before the

Trial Court. The trial would take sufficiently long time in its conclusion.

In the totality of facts and circumstances and without making any observation on merits, present petition is allowed. Petitioner be enlarged on bail on his furnishing bail/surety bonds subject to satisfaction of Trial Court/Duty Magistrate, concerned. Nothing stated herein shall be treated as an expression on the merits of the case.

(RAJESH BHARDWAJ)
JUDGE

03.08.2022

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