

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

208

**CRM-M-22582-2022
Date of decision: 22.11.2022**

Prince

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Anupam Bhardwaj, Advocate
for the petitioner.

Ms. Jasleen Kaur Sidhu, DAG, Punjab.

MANJARI NEHRU KAUL, J. (ORAL)

This is the second petition filed under Section 439 of the Cr.P.C. for grant of regular bail to the petitioner in case FIR No.28 dated 10.04.2021 under Sections 363 and 366 IPC and Section 12 of the POCSO Act, 2012 (Section 12 of the POCSO Act deleted lateron) registered at Police Station Ghuman, District Batala, Gurdaspur.

Short reply by way of affidavit of Gurinderbir Singh, PPS, Deputy Superintendent of Police, Sub Division Sri Hargobindpur, Police District Batala, District Gurdaspur filed in Court today on behalf of the respondent-State is taken on record subject to all just exceptions.

Learned counsel for the petitioner submits that subsequent to the withdrawal of the previous petition on 18.11.2021 seeking similar relief, the evidence of the victim has been recorded and an application under Section 319 Cr.P.C. moved by the prosecution was allowed by the Trial Court whereby two persons have been ordered to be summoned to face trial as additional accused. Learned counsel while

inviting the attention of this Court to the contents of the FIR (Annexure P-1), submits that it was alleged therein by the complainant that the petitioner along with two others had kidnapped the victim on the pretext of solemnizing marriage with her. He submits that subsequent to the recovery of the victim after two days, she did not level any allegation of rape against the petitioner in her statement recorded under Section 164 of the Cr.P.C. and merely alleged that the mother of the petitioner gave her something to eat, after which she lost consciousness and did not know as to what happened with her thereafter. Learned counsel submits that the victim, however, while stepping in to the witness box made material improvements in her deposition by introducing the allegation of rape against the petitioner for the first time, which leaves no manner of doubt that the victim had deposed under the influence of her parents. Learned counsel urges that the material improvements made by the victim at this stage created a dent in the case of the prosecution and the false implication of the petitioner is further evident from the fact that there was no medical evidence to substantiate the allegations of rape and even the FSL report failed to support the same.

Learned counsel has further urged that in absence of any evidence, medical or otherwise, to corroborate the allegations of rape, the Trial Court had erred in framing the alternate charge under Section 376 IPC and Sections 3 and 4 of the POCSO Act, merely on the basis of deposition of the victim. Learned counsel, therefore, prays that the petitioner who has been in custody for more than 1 and half years having been arrested on 10.04.2021 be extended the concession of bail

as there is no likelihood of the trial concluding in the near future, moreso, when the trial would commence denovo on account of summoning of two additional accused under Section 319 Cr.P.C. to face trial by the Trial Court.

Per contra, learned State counsel while opposing the prayer and submissions made by the counsel opposite was not able to controvert the fact that the victim had not levelled any allegations of rape against the petitioner in her statement recorded under Section 164 Cr.P.C. Learned State counsel, on instructions, submits that no doubt the FSL report did not corroborate the allegations of rape and that there was no medical evidence on record to substantiate the said allegations, however, the fact remains that while stepping into the witness box, the victim who was 13 years of age had categorically deposed that she had been raped by the petitioner.

I have heard learned counsel for the parties and perused the material placed on record.

The petitioner has now been in custody for more than one and a half years having been arrested on 10.04.2021; coupled with the fact that two additional co-accused have been summoned by the Trial Court under Section 319 Cr.P.C., hence, the trial would now commence denovo. The trial is, therefore, unlikely to conclude in the near future and further incarceration of the petitioner would serve no useful purpose.

In the facts and circumstances as enumerated hereinabove, the instant petition is allowed. The petitioner be admitted to bail to the satisfaction of the trial Court/Duty Magistrate concerned. However, it is

made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

22.11.2022

(MANJARI NEHRU KAUL)

Vinay

JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No