

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

CRM-M-44761-2018 (O&M)

Date of decision : 28.07.2022

Gursewak Singh

.....Petitioner

versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. G.P.S. Bal, Advocate
for the petitioner.

Ms. Sakshi Bakshi, AAG, Punjab.

Ms. Bhavi Kapoor, Advocate for
Mr. P.S. Ahluwalia, Advocate
for the complainant.

RAJESH BHARDWAJ, J.

Prayer in the present petition is for grant of regular bail to the petitioner in case FIR No.230 dated 29.11.2017, under Sections 328, 363, 376-D of Indian Penal Code, registered at Police Station Lalru, District SAS Nagar.

Succinctly, the facts of the case are that the complaint was lodged by the prosecutrix (name concealed). It was alleged that on the intervening night of 13/14.11.2017, when the prosecutrix was sleeping at around 12 o' clock in the midnight, the door bell of their house rang up. Thinking that her brother had come, she opened the door. She found two persons standing on the main gate. She was caught hold and pushed in the car by them. One person was already in the car who was driving. She found that the boys namely, Gurjinder Singh, Gursewak Singh and Parminder Singh were from her village. They blind folded her by tying

the cloth over her eyes. She was taken in the room where they committed rape upon her. On 15.11.2017, again she was blind folded and taken out of the room and brought in the car near the big hotel situated at Village Kurali. They threatened her and she was alighted from the car. She took lift from passerby on his motorcycle and reached Lalru Mandi where she met her maternal uncle Karam Chand. He told that he had already lodged a missing report about her in the police station. He informed her family members telephonically and then they reached the police station for recording her statement. It was alleged that as she was traumatized after having been released by the accused and hence, did not tell anything to her parents. However, on gaining senses, she lodged the complaint for registering the FIR and to take the legal action against the culprits. On the basis of the same, the FIR was lodged and the investigation commenced. The prosecutrix was medically examined. The swabs were taken and sent to the FSL for DNA sampling. The petitioner was arrested on 03.02.2018. He filed the petition under Section 439 Cr.P.C. praying for grant of regular bail before the learned Sessions Judge, Mohali. However, after hearing counsel for the parties, learned Sessions Judge declined the same vide her order dated 29.05.2018. Aggrieved by the same, the petitioner has approached this Court for grant of regular bail.

Learned counsel for the petitioner has vehemently contended that the petitioner has been falsely and frivolously implicated in this case. He submits that the complaint has been lodged after due deliberations and in a clandestine manner. He further submits that inquiries were conducted in the allegations made by the prosecutrix by the senior police officials

and no truth was found in the same. He submits that Assistant Inspector General of Police (Investigation-I) sent his report to the Director, Bureau of Investigation dated 02.08.2018. He submits that Assistant Inspector General of Police (Investigation-I) had concluded in his findings that the prosecutrix already knew petitioner Gursewak Singh and they had mutual friendship. In the intervening night of 13/14.11.2017, she went out of her home to meet Gursewak Singh where he induced her and they stayed in a hotel at Sanewal where they established physical relations. He also relied upon the WhatsApp chats between the petitioner and the prosecutrix. To buttress his arguments that the petitioner and the prosecutrix were in consensual relationship, he submitted that the complainant approached this Court by way of filing CRM-M-3641-2018 for registration of the FIR. However, as the FIR was already registered, the prosecutrix had withdrawn that petition by virtue of order dated 10th August, 2018. He further vehemently contended that during investigation, the prosecutrix was medically examined and swabs were taken for DNA sampling. He has drawn the attention of this Court to the medical examination report of the victim wherein, as per the conclusion it was opined that human semen and male DNA was not detected in "A-1". He has submitted that Ex.A-1 was the vaginal swabs of the prosecutrix and as per this report, the ocular version of the prosecutrix is not medically corroborated. Thus, he contends that the complicity of the petitioner is not at all established. He submits that during investigation, other two accused named by the prosecutrix, were found innocent and thereafter, they were summoned under Section 319 Cr.P.C. and on account of the same, the incarceration of the petitioner is being intentionally prolonged by delaying the trial. He

has submitted that the prosecutrix already stands examined and hence, there cannot be any apprehension projected by the prosecution that the petitioner can threaten the prosecutrix. He submits that the petitioner is behind bars from last about 04 years and till date, there is no progress in the trial. He submits that in the overall facts and circumstances, the petitioner deserves to be granted bail.

Learned counsel for the complainant has vehemently opposed the submissions made by counsel for the petitioner. Counsel has submitted that petitioner has wrongly relied upon WhatsApp chats placed on record. Perusal of the alleged conversation between the prosecutrix and the petitioner would show that petitioner had exploited the prosecutrix against her wishes and thus, there was no consent on the part of the prosecutrix as contended by counsel for the petitioner. She submits that the additional accused have been summoned under Section 319 Cr.P.C. and the evidence has to be recorded *de novo*. Therefore, the petitioner does not deserve to be released on bail as the same would be prejudicial to the ongoing trial.

Learned State counsel has contended that the petitioner had committed a heinous offence and there are specific allegations made by the prosecutrix against him. She submits that not only in the FIR but when the prosecutrix deposed in her statement under Section 164 Cr.P.C., she duly supported her statement made in the FIR. She submits that in all, there are 29 prosecution witnesses, out of which, only one i.e. the victim has been examined so far.

Heard.

After hearing counsel for the parties and perusing the records, it is deciphered that petitioner is behind bars since 03.02.2018 i.e. for the last 4 years. Counsel for the parties though have argued regarding the WhatsApp chats between the prosecutrix and the petitioner, however, the Court would refrain from commenting anything on the same as the same is subject matter of the evidence to be led before the trial Court. From perusal of the case file. It transpires that, both the petitioner and the prosecutrix are major. The prosecutrix was allegedly abducted from her home in the intervening night of 13/14.11.2017 and thereafter, she was released by the accused persons after having been raped on 15.11.2017. The FIR in question was lodged on 29.11.2017 i.e. after about 15 days of the occurrence. The prosecutrix was medically examined and the DNA reports also did not match with the petitioner. The prosecutrix already stands examined and after her statement, application under Section 319 Cr.P.C. had been filed for summoning the additional accused. The Court cannot ignore the fact that the petitioner is behind bars from the last four years. As per the submissions made by learned State counsel, prosecution has cited 29 prosecution witnesses, out of which, only one has been examined so far. There is nothing on record to show that the petitioner has any criminal antecedents.

The Hon'ble Supreme Court in *Satender Kumar Antil vs. Central Bureau of Investigation and another*, in Misc. Application No.1849 of 2021 in Special Leave Petition (Crl.) No.5191 of 2021 decided on 11.7.2022, while discussing Section 309 Cr.P.C. i.e. "Power to postpone or adjourn proceedings" has observed as under:-

“41. Sub-section (2) has to be read along with subsection (1). The proviso to sub-section (2) restricts the period of remand to a maximum of 15 days at a time. The second proviso prohibits an adjournment when the witnesses are in attendance except for special reasons, which are to be recorded. Certain reasons for seeking adjournment are held to be permissible. One must read this provision from the point of view of the dispensation of justice. After all, right to a fair and speedy trial is yet another facet of Article 21. Therefore, while it is expected of the court to comply with Section 309 of the Code to the extent possible, an unexplained, avoidable and prolonged delay in concluding a trial, appeal or revision would certainly be a factor for the consideration of bail. This we hold so notwithstanding the beneficial provision under Section 436A of the Code which stands on a different footing.”

Further Hon'ble Supreme Court in *Hussainara Khatoon and others vs. Home Secretary, State of Bihar*, 1979 SCR (3) 169 has observed as under:-

“Speedy trial is of the essence of criminal justice and, therefore, delay in trial by itself constitutes denial of justice. Though speedy trial is not specifically enumerated as a fundamental right, it is implicit in the broad sweep and content of Art.21. Speedy trial which means reasonably expeditious trial, is an integral part of the fundamental right to life and liberty enshrined in Art. 21.”

The veracity of the allegations would be assessed only on the conclusion of the trial by evaluating the complete evidences produced before the trial Court. This Court would refrain from commenting anything on the merits of the case. However, keeping in view the overall

facts and circumstances of the case, the Court is of the opinion that counsel for the petitioner succeeds in making out a case for the grant of bail. The trial of the case will take sufficient long time and no useful purpose will be served by keeping the petitioner in custody for such a long time.

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

28.07.2022
m. sharma

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No