

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

CRM-M-28107-2021

Date of decision : 05.08.2022

Munish Kumar

.....Petitioner

versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

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

Ms. Sakshi Bakshi, AAG, Punjab.

RAJESH BHARDWAJ, J. (Oral)

Prayer in the present petition is for grant of regular bail to the petitioner in case FIR No.174 dated 25.11.2020, under Sections 376, 506 of IPC and Section 4 of POCSO Act, 2012, registered at PAU Ludhiana, District Ludhiana.

As per the facts of the case, the FIR was lodged by father of the victim, Mithai Lal Gupta, wherein, it was alleged that his minor daughter-victim (name concealed) was sexually exploited by the accused Shiv Shanker and another boy named Munish who made the video on phone and on this basis, she was blackmailed. Thus, the offence of rape was committed against the minor. The FIR was registered, investigation commenced and the petitioner was arrested on 16.11.2020. Statement of the prosecutrix under Section 164 Cr.P.C was recorded on 27.11.2022. Petitioner had approached the Court of learned Additional Sessions Judge, Fast Track Special Court (POCSO) Act, Ludhiana praying for grant of bail. However, after hearing counsel for the parties, the same was declined vide order dated 06.05.2021. Aggrieved by the same, petitioner

is before this Court for grant of regular bail.

Learned counsel for the petitioner submits that the petitioner has been falsely and frivolously implicated in this case. He has submitted that there are no allegations pertaining to the rape committed by the petitioner with the prosecutrix. He submits that there are false and fabricated allegations pertaining to the making of video of the prosecutrix by the petitioner. However, from the reading of the FIR itself, there is no offence under the IT Act incorporated by the investigating agency against the petitioner. He has also submitted that the mobile phone of the petitioner was recovered and it was sent to the FSL. Perusal of the FSL report would also show that the same is cryptic and leads nowhere. He has vehemently submitted that the petitioner is a young boy and is behind bars from last one year and eight months. He has placed on record the copy of zimni orders of the trial Court wherein it is asserted that the charges were framed on 15.02.2021 and thereafter, the case is being adjourned repeatedly. However, the prosecutrix and the complainant have not turned up for their examination before the trial Court. He has drawn the attention of this Court to the zimni order passed on 12.03.2021 which would read that PWs prosecutrix and Mithai Lal, complainant were not examined. On 09.12.2021, it is recorded by the trial Court that examination-in-chief of PW-2 was recorded and PW-1 prosecutrix had been partly cross-examined. However, thereafter till 04.07.2022 despite various dates, neither the prosecutrix nor the complainant remained present before the trial Court for their examination for the reasons best known to them. He has submitted that the absence of both the prosecutrix and the complainant from the Court is a deliberate attempt to prolong the

incarceration of the petitioner. He has submitted that the petitioner has no criminal antecedents as he has never been involved in any offence. He further submits that in the overall facts and circumstances of the case, petitioner deserves to be granted regular bail.

Learned State counsel on the other hand has opposed the submissions made by counsel for the petitioner. She has submitted that petitioner is minor and there are specific allegations against the petitioner about his complicity. She submits that the mobile phone of the petitioner was recovered and sent to the FSL. However, she candidly acknowledges that the FSL report is not clear regarding the complicity of the petitioner and petitioner is not also charged for the offence under the IT Act. She submits that as per the information provided, out of 18 prosecution witnesses, 02 witnesses have been examined.

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

After hearing counsel for the parties and perusing the record, it is apparent that the petitioner is behind bars since 16.11.2020. The allegations against the petitioner are pertaining to making of the video, however, till date there is no specific evidence. However, the FSL report received is yet to be appreciated by the trial Court. The Court would refrain itself from making any comments on the same. It is apparent from perusal of the zimni orders placed on record that the prosecutrix and the complainant have not remained present before the trial Court for considerably long time which would indicate that the trial is being prolonged due to their absence. There is nothing on record to show that the petitioner has any criminal antecedents.

The trial of the case will take sufficient long time. The veracity of the allegations and the counter-allegations would be assessed by the trial Court on the culmination of the trial on the appreciation of evidence led before it. However, confining itself to the prayer made for bail, this Court finds that 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 with local surety 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.

05.08.2022
m. sharma

(RAJESH BHARDWAJ)
JUDGE

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