

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(221)

CRR-1227-2022

Date of Decision: 30.09.2022

Nafish

--Petitioner

Versus

State of Haryana

--Respondent

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

Present:- Mr. Bhisham Kumar, Advocate for the petitioner.

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

RAJESH BHARDWAJ.J (Oral)

The present revision petition has been filed impugning the orders dated 27.4.2022 passed by learned Addl. Sessions Judge, Palwal and order dated 28.3.2022 passed by learned Principal Magistrate, Juvenile Justice Board, Palwal.

As per factual matrix, the FIR in question was lodged by the victim herself, who is 13 years of age, wherein it was alleged that on 25.8.2018 at 12 AM when she along with her sisters was sleeping on the roof top, then, Nafish i.e. the present petitioner and Arbaz came to their house and both of them committed rape with her. Her uncle saw them and they escaped from their house. Thereafter, talks of settlement started, however, the present FIR was lodged to take legal action against the culprits.

The investigation commenced, however, petitioner could not be arrested after registration of the FIR and he was finally arrested on 29.1.2020. Being a juvenile, he was produced before the Juvenile Justice

Board. His prayer for grant of bail was declined by the Juvenile Justice Board vide order dated 28.3.2022, however, he filed application for bail under Section 101 of the Juvenile Justice Act before the Children's Court, palwal but the same was also declined by the learned Sessions Court vide order dated 27.4.2022. Aggrieved by the same petitioner has approached this court for grant of bail.

Learned counsel for the petitioner vehemently contends that the petitioner is a juvenile being less than 18 years of age. He has submitted that the allegations in the FIR are totally false and frivolous. He further submits that as per the allegations the victim along with her sisters was sleeping on the roof top and in that situation the rape was committed upon her by the two accused, which is totally improbable. It is also submitted that during investigation clothes of the victim were sent to FSL for examination, however, no human semen was detected. Counsel submits that petitioner being a juvenile is in the Observation Home since the date of his arrest i.e. 29.1.2020 and thus he is in custody for the last about 2 years and 7 months. Counsel submits that even if the charges are proved against the petitioner, the maximum sentence awarded to the petitioner would be 3 years. He submits that petitioner has virtually undergone the sentence and further submits that petitioner being a juvenile deserves to be brought back in the mainstream of the society and hence deserves to be granted bail.

On the other hand, learned State counsel has opposed the submissions made by counsel for petitioner. He submits that victim in the present case is 13 years of age and she has made specific allegations against

the petitioner. He further submits that after registration of the FIR the petitioner was not traceable and he remained at large for about 2 years and was arrested on 29.1.2020. He further submits that petitioner is involved in one more case, however, he has already undergone the sentence in that case.

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

Admittedly, the petitioner before this court is a juvenile. Though, he is facing allegations pertaining to a heinous offence, however, as per submissions made by counsel no human semen was detected on the clothes of the victim sent for examination to FSL. This court cannot be oblivious of the fact that petitioner belongs to a marginal society and is behind bars for the last about 2 years and 7 months. This court is of the opinion that petitioner has already undergone majority of the sentence and his further incarceration would be counter productive and would adversely effect his growth. The investigation already stands completed and charges have been framed. The veracity of the allegations levelled against the petitioner would be assessed by the Trial Court only upon conclusion of the trial. 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 to be 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 the 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

30.09.2022

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