

215 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-22514-2020

Date of decision : 15.03.2022

Kuldeep

.... Petitioner

Versus

State of Punjab

.... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Ashish K. Gupta, Advocate
for the petitioner.

Ms. Sakshi Bakshi, AAG, Punjab.

RAJESH BHARDWAJ, J. (ORAL)

Matter has been taken up through video conferencing via Webex facility in the light of the Pandemic Covid-19 situation and as per instructions.

Prayer in the present petition is for grant of regular bail to the petitioner in case FIR No.385 dated 08.10.2019, under Sections 376, 354, 506 of the Indian Penal Code, 1860, registered at Police Station Zirakpur, District SAS Nagar, Mohali.

As per factual matrix of the case, the present FIR was lodged by the prosecutrix herself. As per the sum and substance of the allegations in the FIR, the prosecutrix, who is 23 years of age, is labourer by profession. On 07.10.2019 at about 09:00 PM when she was going along with her children and sister, she reached near Maddi of Village Bhabat and waited for a three-wheeler. In the meantime, a three-wheeler came and its driver agreed to drop her at the place where she wanted to go. Taking the benefit of the night and the prosecutrix being unaware of the route, the driver of the

Auto took her to a secluded place. She was forcibly made to drink liquor.

He took her to bushes where she was forcibly raped. The children were already slept and so far as her sister is concerned, she was thrown out of the Auto. It is stated that after committing rape, she was dropped along with the children at Lucky Dhaba, Zirakpur by the driver of the Auto. Later on, she came to know that Auto driver was Kuldeep Singh i.e the petitioner. The FIR was lodged to take legal action against the petitioner. After the commencement of the investigation, petitioner was arrested on 09.10.2019. He approached the Court of learned Special Court, SAS Nagar, Mohali for seeking the regular bail, however, after hearing counsel for the parties, learned Special Court, declined the same vide order dated 07.07.2020. Aggrieved by the same, petitioner has approached this Court by way of the present petition for grant of regular bail.

Learned counsel for the petitioner has vehemently contended that petitioner has been falsely implicated in this case. He submits that both the petitioner and the prosecutrix are of the age of majority. Prosecutrix is admittedly mother of two children. He submits that the allegations in the FIR does not appeal to the common sense that when the prosecutrix along with her children and sister was there on the way, she was forcibly taken away by the petitioner and was raped in their presence itself. He further submits that as per the allegations, after raping the prosecutrix the petitioner himself dropped the prosecutrix and the children to Lucky Dhaba, Zirakpur. He has submitted that during investigation, sample was sent for DNA test and the same was found negative. He further submits that even report of the Chemical Examiner would also show that there was no alcohol/drug detected in the content of Ex.I & II. He submits that as both the reports i.e. DNA report and Chemical Examiner report are negative, the ocular version

of the prosecutrix is not at all medically corroborated. He submits that except bald allegations of the prosecutrix, the prosecution had no evidence to corroborate the same and the statement of the prosecutrix, who is of the age of majority, does not inspire any confidence. He has also submitted that petitioner is behind the bars since last more than two years and the material witnesses already stand examined. Hence, petitioner deserves to be granted bail.

Learned State counsel has opposed the submissions made by counsel for the petitioner. She has submitted that there are specific allegations against the petitioner. She has submitted that even in the statement under Section 164 Cr.P.C. and when she was examined before the trial Court, throughout she has supported the case of the prosecution and hence, the petitioner does not deserve the concession of bail. She further submitted that out of 17 prosecution witnesses, 04 witnesses are examined till date including the prosecutrix.

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

Apparently, the prosecutrix and the petitioner, both are of the age of majority. The present occurrence has allegedly taken place in the presence of the other family members. The status report filed by the State would show that the DNA report as well as the Chemical Examiner report were negative. The veracity of the allegations is to be assessed by the trial Court on the conclusion of the trial. However, the Court at this stage would refrain itself from commenting anything on the merits of the case. However, the material witnesses already stand examined. This Court finds that there would not be any apprehension of tampering with the evidences by the petitioner.

The trial of the case will take sufficiently long time and no useful purpose will be served by keeping the petitioner in custody for such a long time. In the overall facts and circumstances of the case, I find that learned counsel for the petitioner has succeeded 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 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.

15.03.2022
m. sharma

(RAJESH BHARDWAJ)
JUDGE

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