

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(232)

CRM-M-26122-2022-
Date of decision:- 06.12.2022

Rajat

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Jitender S. Kundu, Advocate for the petitioner.

Mr. Viney Phogat, DAG, Haryana for State-respondent.

SUVIR SEHGAL, J. (ORAL)

By way of present petition filed under Section 439 of the Code of Criminal Procedure, 1973 (for short “the Code”), petitioner has approached this Court seeking grant of post-arrest bail in case FIR No.110 dated 27.02.2021, registered for offences under Sections 323, 376(3) and 506 of the Indian Penal Code, 1860 (for short “IPC”), wherein Section 4 of Protection of Children from Sexual Offences Act, 2012 (for short “POCSO Act”) was added later on after deleting Section 18 of POCSO Act and Sections 328, 34, 365 and 506, IPC, at Police Station Gharaunda, Karnal, Annexure P-1.

Case of the prosecution is that FIR, Annexure P-1, has been registered on the complaint by mother of a fifteen year old girl (hereinafter referred to as “the minor prosecutrix”) on the allegation that she had gone to her uncle's house when three boys, namely, Babu, Rohit and son of Bhagwan Dass came on a motorcycle, drugged her and abducted her in an unconscious state at about 2 o'clock in the afternoon. When she regained

consciousness, all three of them threatened her by showing her a knife and told her that in case she revealed the incident to anyone, she as well as her family members will be eliminated. All three of them left her back at about 06:30 P.M.

Counsel for the petitioner has vehemently argued that the petitioner is not named in the FIR and has been falsely implicated. He submits that the version of the complainant as well as the minor prosecutrix was not found to be true and some of the offences invoked in the FIR were dropped by the prosecution and the three accused named were found to be innocent in the final report submitted under Section 173 of the Code. It is his specific case that the petitioner has been embroiled in the case as an after thought.

Per contra, learned State counsel, upon instructions, has opposed the petition and has submitted that there is sufficient incriminating material against the petitioner, who is accused of raping a minor girl. He has filed reply by way of an affidavit of Deputy Superintendent of Police, Gharaunda, District Karnal, which is taken on record and has made a reference to the documents appended therewith. State counsel submits that challan has been presented against the petitioner under Sections 323, 376(3), 506, IPC and Section 4 of POCSO Act, he has been charge-sheeted for the offences and twelve out of eighteen prosecution witnesses have been examined.

I have heard the respective submissions of counsel for the parties.

Although, the petitioner is not named in the FIR, but the minor prosecutrix in her deposition has stated that one of the accused had

committed rape upon her. She has stood by the incident. The DNA profiling of the recovery has been done and the opinion given by the Forensic Science Laboratory, Madhuban, which is appended as Annexure P-2, with the reply filed by the State, is as under:-

“OPINION

The Autosomal STR analysis indicates as below:-

- 1. DNA profile of Source of item No.3 (Salwar) is matching with the DNA profile of blood sample of Rajat (Source of item No.8).*
- 2. DNA profile of Source of item No.3 (Salwar) is no matching with the DNA profile of blood sample of Gaurav (Source of item No.4), Sonu (Source of item No.5), Rohit (Source of item No.6), Surender (Source of item No.7). ”*

Even though, the minor prosecutrix has stated that the petitioner and other co-accused did not sexually exploit her, but in the light of the damning medical evidence, which has come on the record, this Court is not inclined to accept the prayer made in the petition.

Keeping in view the totality of facts and circumstances, nature of allegations, gravity of offence, age of the minor prosecutrix evidence against the petitioner as well as the advanced stage of the trial, the prayer made in the petition deserves to be rejected.

Petition is dismissed.

It is clarified that nothing said hereinabove shall be construed to be an expression of opinion on the merits of the case.

(SUVIR SEHGAL)
JUDGE

06.12.2022

Kamal

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No