

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(222)

CRM-M-25828-2022
Date of Decision: 30.08.2022

Mahesh Kumar

--Petitioner

Versus

State of Haryana

--Respondent

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

Present:- Mr. K.B.S. Mann, Advocate for the petitioner.

Mr. Neeraj Poswal, A.A.G., Haryana.

RAJESH BHARDWAJ.J (Oral)

The present petition has been filed under Section 439 Cr.P.C seeking the benefit of regular bail to the petitioner in case FIR No.577 dated 2.10.2019 under sections 363, 366-A, 376(D)(1) IPC and section 6 of POCSO Act, registered at Police Station, Quila, Panipat, district Panipat.

As per factual matrix, the FIR in question was lodged by the cousin of the victim, wherein it was alleged that her uncle's daughter (name concealed) was residing with her and she went to some undisclosed place and her age was 15 years. It was suspected that Mahesh Kumar i.e. the present petitioner had allured her away and the request was made to take legal action against the culprit.

The investigation commenced and victim was recovered on 3.10.2019. Her statement under section 164 Cr.P.C was recorded by the Magistrate and she was medically examined. Petitioner was arrested on 9.10.2019. He approached learned Addl. Sessions Judge, Panipat for grant of bail, however, after hearing the parties, the same was declined vide order

dated 3.6.2021. Aggrieved by the same petitioner has approached this court for grant of bail.

Learned counsel for the petitioner vehemently contends that the petitioner has been falsely implicated in the present case. He submits that the prosecutrix initially alleged that petitioner and co-accused Sanjeet committed rape upon her, however, during the trial she did not support the case of the prosecution qua co-accused Sanjeet and hence she was declared hostile qua co-accused Sanjeet. Counsel submits that prosecutrix has falsely implicated the petitioner in her statement recorded under section 164 Cr.P.C and her deposition before the learned Trial Court. He submits that the co-accused Sanjeet has been granted bail by the Trial Court. It is submitted that the ocular version of the prosecutrix is not even medically corroborated. He submits that as the material witnesses already stand examined the possibility of influencing them is no more. Counsel submits that petitioner has no criminal antecedents and keeping in view his long incarceration i.e. about 3 years, he deserves to be granted the benefit of bail.

On the other hand, learned State counsel submits that there are specific allegations against the petitioner. He submits that prosecutrix is a minor being less than 18 years of age. He submits that prosecutrix supported the case of prosecution while recording her statement under section 164 Cr.P.C and also while deposing before the learned Trial Court as a prosecution witness. He submits that prosecutrix was also medically examined and the DNA report proved to be negative. He further submits that out of the total 17 prosecution witnesses, 9 have been examined including the prosecutrix and the complainant. He further submits that as

per information provided to him petitioner is not involved in any other case.

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

Admittedly, petitioner is behind bars since 9.10.2019. Initially the prosecutrix named two accused i.e. present petitioner and Sanjeet, however, thereafter she turned hostile before the learned Trial Court qua co-accused Sanjeet and thus he was granted bail. As per the DNA report samples taken from the petitioner were not matched. The material witnesses including the prosecutrix and complainant stand examined by the Trial Court and hence the possibility of the petitioner influencing the material witnesses does not survive. This court cannot be oblivious of the fact that the petitioner is behind bars for the last about 3 years. The prosecution has only examined half of the prosecution witnesses out of the total cited 17 witnesses. There is nothing on the record to show that petitioner has any criminal antecedents. 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

30.08.2022
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Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No