

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

CRM-M-29775-2021

Date of decision : 25.04.2022

Monu @ Tiwari

.....Petitioner

versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Ms. Riffi Bala Birla, Advocate
for the petitioner.

Mr. Rakeshinder Singh Sidhu, AAG, Punjab.

RAJESH BHARDWAJ, J. (Oral)

Prayer in the present petition is for grant of regular bail to the petitioner in case FIR No.37 dated 31.03.2020, under Sections 376, 506 of Indian Penal Code and Section 4 of POCSO Act, 2012 (Sections 376-D, 363, 366-A IPC and Section 6 of POCSO Act added later on), registered at Police Station City-II Abohar, District Fazilka.

Adumbrated facts of the case are that the present FIR was lodged by one Bagga Singh @ Balwinder Singh. It was alleged that his eldest daughter i.e. the victim (name concealed) was 13 years of age. It was alleged that after having meal, they went to sleep and when they woke up at about 04:30 AM, they found his victim daughter not present at home. He kept searching his daughter along with his wife Baljit Kaur. When they came back, they found the victim crying. On asking, she disclosed that Monu @ Tiwari had called her on mobile on which, she went with him. He took her to one lonely place in the bushes where Rahul son of Raj Kumar was already present. Monu committed wrongful act with her forcibly and after committing rape, Monu and Rahul threatened his daughter that in case she disclosed anything about the same, she would be killed. FIR was lodged to

take the legal action against the culprits. On the commencement of the investigation, the victim was sent for the medical examination and her statement under Section 164 Cr.P.C. was recorded. Both the accused i.e the petitioner and the co-accused Rahul were arrested on 31st March, 2020. Thereafter, the petitioner approached the Court of learned Sessions Judge, Fazilka, however, after hearing counsel for the parties, learned Sessions Judge declined the same vide order dated 30th June, 2020. Aggrieved by the same, the petitioner has approached this Court for grant of regular bail by way of the present petition.

Learned counsel for the petitioner has contended that the petitioner has been falsely and frivolously implicated in this case. She submits that though the victim is minor but the case set up against the petitioner is totally fabricated. She has submitted that the statement of the victim was recorded by the learned Magistrate under Section 164 Cr.P.C. on 01.04.2020 wherein the victim deposed that on 30.03.2020 at about 11 o'clock in the night, Monu Tiwari had called her telephonically. He took her in a house situated nearby where Rahul was also present. She stayed there for about 10-15 minutes and came back to her home. She deposed that neither Rahul nor Monu Tiwari committed any wrongful act with her nor compelled her. She submits that the prosecutrix has totally exonerated both the accused in her statement under Section 164 Cr.P.C. She further submits that at the time of her medical examination, it was recorded that "history of being sexually assaulted by Rahul on 30.03.2020 at 11:00 PM. She went to field at night for urination where Rahul sexually assaulted her". She submits that perusal of this medical history would show that it was Rahul who had been alleged to have sexually assaulted the victim. Learned counsel submits that thereafter the complainant, mother of the victim and the

victim herself have been examined by the trial Court as PW-1, PW-2 and PW-3 respectively. She submits that though all these witnesses have supported the case of the prosecution but the victim while appearing as PW-3 has improved the version and has deposed that Rahul and Monu both committed rape upon her turn-wise. She submits that perusal of the record and the FIR and the deposition made before the trial Court would show that the witnesses are improving their version which cast a shadow on the case of the prosecution. She further submits that co-accused Rahul has already been granted bail by this Court vide order dated 08.01.2021 passed in CRM-M-37761-2020. She submits that as the petitioner has never been earlier involved in any of the case of similar nature and the material witnesses already stand examined, there cannot be any threat to the ongoing trial on the premise that the petitioner would hamper or influence the witnesses and hence, the petitioner deserves to be enlarged on bail.

Learned State counsel has opposed the submissions made by counsel for the petitioner. He submits that the victim is less than 15 years of age and thus, there is a presumption under Sections 29 and 30 of the POCSO Act which is attracted in the case. He submits that the contradictions pointed out by counsel for the petitioner are minor in nature and cannot be considered as material contradictions and would have no bearing on the merits of the case. However, he candidly acknowledges that the co-accused has been granted bail and the material witnesses already stand examined. He has further submitted that out of 16 prosecution witnesses, 05 prosecution witnesses already stand examined.

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

Apparently, the victim is minor and at the time of recording of her statement under Section 164 Cr.P.C. She did not allege anything against

both the accused. However, while appearing before the trial Court, she has deposed that both the accused have committed rape with her turn-wise. While conducting her medical examination in the history of her medical report, the name of Rahul is found mentioned who sexually assaulted her. The co-accused Rahul has already been enlarged on bail vide order dated 08.01.2021. petitioner is behind the bars for the last more than two years. The material witnesses have already been examined. There is nothing on record showing that the petitioner has any criminal antecedents prior to this case. The veracity of the allegations would be assessed only after the appreciation of the complete evidences to be led before the trial Court. However, confining to the prayer made in the bail, this Court finds that in the facts and circumstances of the case, petitioner deserves to be enlarged on bail.

The trial of the case will take sufficient long time and no useful purpose will be served by keeping the petitioner in custody for such a long time. Without commenting anything on the merits of the case, this Court is convinced that the 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 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.

25.04.2022
m. sharma

(RAJESH BHARDWAJ)
JUDGE

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