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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-30119-2021 (O&M)

Date of decision: 20.01.2022

HARI BAHADUR

...Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present:- Mr. Naveen Sharma, Advocate
for the petitioner.

Mr. Sidakmeet Singh Sandhu, 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.

CRM-1686-2022

Prayer in this application is for placing on record Annexures P-6 to P-9.

For the reasons mentioned in the application, the same is allowed.

Annexures P-6 to P-9 are taken on record, subject to all just exceptions.

CRM-M-30119-2021

Prayer in the present petition is for the grant of regular bail to the petitioner in a case FIR No.82 dated 04.04.2021, registered under Section 376 IPC and Section 6 of Prevention of Children from Sexual Offences Act, 2012, at Police Station Gobindgarh, District Fatehgarh Sahib.

As per factual matrix of the case, the FIR in question was registered on the statement of Uttam Kumar, who is father of the victim. It was alleged that his marriage was solemnized six years back and he was blessed with two children i.e. elder son, aged 4 years and younger daughter, aged about 8 months. Hari Bahadur son of Padam Bahadur, resident of village Kurkarda, District Gulmi, Nepal, was running a tea stall opposite to the residence of his in-laws on the road side. On the date of occurrence at about 5:00 p.m., his brother-in-law namely Ayush, aged 7 years was carrying the victim (minor daughter of complainant) outside in the street. When his brother-in-law came home, he was asked about the minor daughter and he told that Hari Bahadur has taken her to play. After some time, the cries of her daughter was heard from inside the shop of Hari Bahadur. His wife went to the shop and saw that there was blood on private part of her daughter. It was at about 5:15 p.m., his wife told him on phone that Hari Bahadur has committed rape on the minor daughter. She was admitted at Civil Hospital, Gobindgarh for treatment, and thereafter, the present FIR was lodged with a request to take legal action against the culprits and the petitioner was arrested on 05.04.2021. Thereafter, he approached the learned Additional Sessions Judge, Fatehgarh Sahib for the grant of bail and after hearing learned counsel for the parties, the learned Additional Sessions Judge declined the same vide order dated 09.07.2021. Aggrieved by the same, the petitioner approached this Court by way of filing the present petition for grant of regular bail.

Learned counsel for the petitioner contends that the petitioner is a reputed person of the society and has no criminal antecedents. He submits that there is no prior case of such nature against the petitioner, however, he

has been falsely implicated in the present FIR. He further submits that the petitioner is running a tea shop in the vicinity of the residence of the complainant and has never been involved in any offence of such nature. He further submits that the false implication of the petitioner is strengthened from the fact that the complainant i.e. father of the victim namely Uttam Kumar was examined by the trial Court as PW-1, the mother namely Roshni as PW-2 and PW-5 Doctor namely Sonika Kaushal, Medical Officer, Gynaecologist, SDH, Mandi Gobindgarh, who examined the victim child. He further submits that both the parents of the victim have not supported the case of the prosecution and on request of learned Public Prosecutor, were declared hostile. He further submits that on the cross-examination by the Public Prosecutor, nothing material could be elucidated in favour of the prosecution. He further submits that the doctor has been examined as PW-5 who has specifically deposed that on examination of the victim on 05.04.2021, the child was found active, playful and afebrile. On examination of the perineal region, no laceration or abrasion was found. In cross-examination, the doctor had deposed that there was no sign of any forceful act upon the victim. Hence, learned counsel for the petitioner submits that in view of the evidence of material witnesses, it is evident that prosecution case is without any material evidence. He submits that out of total 20 prosecution witnesses, only 06 prosecution witnesses have been examined so far, hence, further incarceration of the petitioner is totally unwarranted and he should be enlarged on bail. Learned counsel for the petitioner placed on record copies of the depositions of three witnesses on record.

Learned State counsel has vehemently opposed the submissions made by learned counsel for the petitioner and submits that the victim is 8 months old and there are specific allegations against the petitioner. However, he acknowledges that the material witnesses i.e. parents of the victim have not supported the case of the prosecution.

Heard.

The petitioner is behind the bars since 05.04.2021. The material witnesses i.e. parents of the victim have not supported the case of the prosecution. The veracity of the allegations is to be evaluated by the trial Court, after conclusion of evidences to be lead by both the sides. The trial of the case is likely to take sufficient time as out of total 20 prosecution witnesses, only 06 prosecution witnesses have been examined so far 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 am of the opinion that learned counsel for the petitioner has been able to make out a case for grant of regular bail to the petitioner. Accordingly, the present petition is allowed and the petitioner is ordered to be released on bail 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.

20.01.2022
Chetan Thakur

(RAJESH BHARDWAJ)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No