

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(205)

CRM-M-27261-2022

Date of decision: - 28.06.2022

Harnek Singh

....Petitioner

Versus

State of Punjab

.....Respondent

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. S.S. Rangi, Advocate,
for the petitioner.

Mr. Sarabjit S. Cheema, AAG, Punjab.

VIKAS BAHL, J. (ORAL)

This is a first petition under Section 439 Cr.P.C. for grant of regular bail in FIR No.144 dated 05.06.2021, registered under Sections 363 and 366-A IPC (Section 376-DA IPC and Section 4 of the Protection of Children from Sexual Offences Act, 2012 have been added later on), at Police Station Anaj Mandi, District Patiala.

Learned counsel for the petitioner has submitted that the petitioner is in custody since 13.06.2021 and out of total 19 prosecution witnesses, only 4 have been examined and 15 witnesses are yet to be examined, thus, the trial is likely to take time. It is further submitted that the petitioner is not involved in any other case and that the petitioner was not named in the FIR and even in the statement under Section 164 Cr.P.C., which was recorded after a period of six days from the FIR, the

petitioner who is a relative of the co-accused, namely, Harwinder Singh, has not been named. It has also been argued that as per the statement under Section 164 Cr.P.C., it has been stated by the prosecutrix that she had left the house on her own will and met co-accused Harwinder Singh, who had taken her to Rajgarh. It is further submitted that although, the petitioner was not named in the statement under Section 164 Cr.P.C. by the prosecutrix which was recorded on 11.06.2021, but in the statement under Section 161 Cr.P.C., which was also recorded on 11.06.2021, it was stated that the second unnamed boy was Ajay and it is the case of the prosecution that the said Ajay is the present petitioner. It is also contended that a perusal of the CFSL report dated 12.11.2021 (Annexure P-10) would show that although, the presence of human semen has been confirmed on the exhibits which were sent to the Central Forensic Science Laboratory, but it was concluded that the male DNA profile recovered from the swabs and nail clippings of the prosecutrix was consistent with the DNA profile of co-accused Harwinder Singh @ Happy and the genetic contribution of the present petitioner was not found on the swabs and nail clippings of the prosecutrix. Learned counsel for the petitioner has argued that the prosecutrix has already been examined and thus, no purpose would be served by keeping the petitioner in further incarceration.

Learned State counsel on the other hand has opposed the present petition for regular bail and has submitted that in the present case, the girl is a minor and even in the statement under Section 164 Cr.P.C., she had stated that apart from co-accused Harwinder Singh, there was

another boy, who had committed forcible acts with her. It is further submitted that the said prosecutrix has been examined as PW-2 and she has named the second boy as the present petitioner.

This Court has heard learned counsel for the parties and has perused the paper book.

Petitioner has been in custody since 13.06.2021 and out of total 19 prosecution witnesses, only 4 have been examined and 15 witnesses are yet to be examined, thus, the trial is likely to take time. The petitioner is stated to be not involved in any other case. The petitioner was not named in the FIR and even in the statement under Section 164 Cr.P.C., which was recorded on 11.06.2021 i.e., after a period of six days from the registration of the FIR, the prosecutrix had not named the present petitioner, although he is a relative of co-accused Harwinder Singh. In the said statement recorded under Section 164 Cr.P.C., the prosecutrix had stated that she had left the house on her own will and met the co-accused Harwinder Singh, who had taken her to Rajgarh. The prosecutrix in statement under Section 161 Cr.P.C. recorded on 11.06.2021, on the same date when the statement under Section 164 Cr.P.C. was recorded, had named the second person for the first time and had stated that the second person was namely, Ajay, who as per the prosecution case, is the present petitioner. It is the argument of learned counsel for the petitioner that in the statement under Section 164 Cr.P.C. which was recorded on 11.06.2021, the petitioner was not named, however, in the statement under Section 161 Cr.P.C. the petitioner had been falsely named solely on account of the fact that the petitioner is a

relative of co-accused Harwinder Singh. The petitioner has also placed reliance upon the CFSL report dated 12.11.2021 (Annexure P-10), the relevant portion of which is reproduced hereinunder: -

"Opinion:

Based on DNA examination and observations thereof, it is concluded that:

- 1. Presence of human semen is confirmed on swabs (source of Exhibit 2A, 2B, 2C, 2D, 2E, 2G) of Ms. xxxx (name withheld). Further the male DNA profile recovered from the swabs and nail clippings of Ms. xxxx (name withheld) is consistent with the DNA profile of Mr. Harwinder Singh @ Happy.*
- 2. The genetic material contribution of Mr. Harnek Singh @ Ajay and Mr. Satwant Singh @ Satta was not found on the swabs and nail clippings of Ms. xxxx (name withheld).*

sd/-

Dr. Devinder Kumar

Junior Scientific Officer (Biology)

Signature of the Examiner cum Reporting Officer."

Perusal of the above report would show that the genetic contribution of the petitioner was not found on the swabs and nail clippings of the prosecutrix. The prosecutrix and complainant have already been examined and thus, the question of the petitioner influencing them does not arise.

Keeping in view the above-said facts and circumstances, 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 and subject to him not being required in any other case.

However, it is made clear that in case, any act is done by the petitioner to threaten the complainant, prosecutrix or any of the witnesses,

then it would be open to the State to move an application for cancellation of bail granted to the petitioner.

Nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.

June 28, 2022
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	Yes