

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

CRM-M-27346-2022

Date of Decision: 08.09.2022

Abhishek @ Abhishek Gupta

..... Petitioner

Versus

The State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Gaurav Datta, Advocate and
Ms. Simarpreet, Advocate, for the petitioner.

Mr. B.S. Virk, Deputy Advocate General, Haryana.

Rajesh Bhardwaj, J. (ORAL)

Prayer in the present petition is for the grant of regular bail to the petitioner in a case FIR No.149 dated 21.11.2021, registered under Section 376 IPC and Section 6 of POCSO Act, 2012, at Police Station Women, Panchkula.

As per factual matrix of the case, the present complaint was made by the prosecutrix herself (name concealed). It was alleged that she is 13 years of age and studying in 9th class. About a year ago, she used to go for tuition to Rajni in her village. Younger brother of Ranji, namely, Abhishek (the petitioner) became friendly with her and thereafter, Abhishek made physical relationship with her in his house. On 19.11.2021, when she was on the terrace, she slipped from the stairs, which resulted in stomach ache. She was taken to Civil Hospital, Sector-6, Panchkula, where during treatment, she delivered a fetus of 6-7 month old. It was alleged that a still born child was conceived by her from Abhishek, who enticed her for physical relationship. The complaint was made to take legal action against

the accused. On the basis of the complaint, the FIR was registered and the investigation commenced. The prosecutrix was medico legally examined and swabs were taken and were sent to the FSL for DNA sampling. Her statement under Section 164 Cr.P.C. was also recorded. The petitioner was arrested on 23.11.2021. He approached the Court of learned Addl. Sessions Judge, Panchkula for grant of bail, who, after hearing the parties, declined the same vide order dated 15.6.2022. Aggrieved by the same, the petitioner has approached this Court by way of filing the present petition for grant of bail.

Learned counsel for the petitioner has vehemently contended that the petitioner has been falsely implicated in this case. He submits that the allegations levelled by the prosecutrix in the FIR was without any basis and the same are not substantiated. He has submitted that though the prosecutrix deposed against the petitioner in the FIR as well as in her statement recorded under Section 164 Cr.P.C. under the influence of her parents, however, the prosecutrix, her mother and her father were examined by the learned trial Court as PW-1, PW-2 and PW-3, respectively. He has submitted that these witnesses have not supported the case of the prosecution during their examination before the trial Court. He submits that the prosecutrix though named the petitioner in the FIR as well as in the statement recorded under Section 164 Cr.P.C., however, before the trial Court while being examined as PW-1 she deposed that she did not know the name of the person, from whom she conceived. She further deposed that Abhishek, who was present in Court, not committed any wrong act with her. Similarly, the parents of the prosecutrix have also not supported the case of

the prosecution. He further submits that during the investigation, swabs were taken and sent to the FSL for DNA sampling and on the receipt of the same, the reports were found to be negative and thus, the fetus was not matched with the DNA of the petitioner. He submits that the ocular version of the prosecutrix is not medically corroborated. He has submitted that the petitioner has no criminal antecedents. He submits that the material witnesses in the case are already examined and thus, the petitioner is not in a position to influence the prosecution evidence. He submits that in the facts and circumstances, the petitioner deserves to be enlarged on bail.

On the other hand, learned State counsel has opposed the submissions made by learned counsel for the petitioner. He submits that the prosecutrix was minor. He submits that the prosecutrix had categorically alleged the complicity of the petitioner in the FIR as well as the statement recorded under Section 164 Cr.P.C. However, he submits that before the trial Court the prosecutrix and her parents have not supported the case of the prosecution. He candidly acknowledges that the FSL report and DNA report were also found to be negative. He has submitted that out of total 16 prosecution witnesses, 3 witnesses are examined, which includes the prosecutrix and her parents and they have not supported the case of the prosecution.

Heard.

The petitioner is behind bars since 23.11.2021. Though there were allegations by the prosecutrix regarding the petitioner having established physical relationship with her, however, during the course of the trial all the three material witnesses have not supported the case of the

prosecution. Besides this, the FSL and DNA reports were also found to be negative. There is nothing on record showing that the petitioner has any criminal record. Though the veracity of the allegations would be evaluated only after conclusion of the trial, however, this Court would refrain itself from commenting anything on the merits of the case. Out of total 16 prosecution witnesses, 3 witnesses already stand examined including the prosecutrix and her parents. There is no possibility of the petitioner influencing the prosecution evidence. Keeping in view the overall facts and circumstances of the case, I am of the view that learned counsel for the petitioner has been able to make out a case for grant of regular bail to the petitioner. The trial would take sufficient long time for its conclusion.

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.

08.09.2022		(RAJESH BHARDWAJ)
sharmila		JUDGE
	Whether Speaking/Reasoned :	Yes/No
	Whether Reportable :	Yes/No