

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

CRM-M-31642-2021

Date of decision : 27.09.2022

Kasamdeen

.....Petitioner

versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Liaqat Ali, Advocate
for the petitioner.

Mr. Karunesh Kaushal, AAG, Punjab.

RAJESH BHARDWAJ, J. (Oral)

Prayer in the present petition is for grant of regular bail to the petitioner in case FIR No.102 dated 21.07.2020, under Sections 376, 363, 341, 34 of IPC, registered at Police Station Haryana, District Hoshiarpur.

As per the facts of the case, the present FIR was lodged by the prosecutrix. The sum and substance of the allegations in the FIR that the prosecutrix was married about four years ago and she is divorcee at present. On 10th July, 2020 at about 4:00 AM when she was milking the buffaloes, then four persons came in a white coloured car and abducted her. She was put in the car and was taken to the forest in an intoxicated condition. All those four persons raped her and after about 7-8 days on 18th July, 2020, they dropped her at Tanda near Jahura village. Thereafter, her uncle Kasamdeen brought her home and informed the Sarpanch of the Village Jahura. She alleged that she could not record the statement till date as she

was in an intoxicated condition. The request was made to take legal action against the accused. Thereafter, the statement of the prosecutrix was recorded under Section 164 Cr.P.C. on 27th July, 2020 wherein, she deposed on the lines of the allegations as made in the FIR. However on 19th August, 2020, her second statement under Section 164 Cr.P.C. was recorded wherein, she deposed that it was Kasamdeen i.e. the petitioner under whose influence she deposed against the four accused named in the FIR. However, they had no role to play in raping her rather, it was Kasamdeen i.e. the petitioner only who had kept her on all these days forcibly. She was kept by the petitioner- Kasamdeen and he raped her. Resultantly, the four accused who were named in the initial version in the FIR were declared innocent and the investigation commenced against the petitioner. The petitioner was arrested on 20th May, 2021. He approached the Court of learned Additional Sessions Judge, Hoshiarpur praying for grant of bail. However, after hearing counsel for the parties, learned Additional Sessions Judge declined the same vide order dated 02.07.2021. Aggrieved by the same, the petitioner is before this Court praying for grant of regular bail.

Learned counsel for the petitioner has contended that the petitioner has been clandestinely implicated in this case by the prosecutrix. He submits that the petitioner is a maternal uncle of the prosecutrix and has been named by the prosecutrix after about a month from the date of the alleged occurrence. He has submitted that the prosecutrix is married and thereafter, she was divorced. He has submitted that the prosecutrix specifically named four accused who abducted her on 10th July, 2020 and thereafter, raped her in an intoxicated condition. He submits that the prosecutrix reiterated her allegations in the statement made by her in her first statement made under Section 164 Cr.P.C. Thereafter, under the influence of

the accused, the investigating agencies changed the course of the investigation and deliberately recorded the second statement under Section 164 Cr.P.C. only in order to implicate the petitioner in a false case. He has submitted that no reliance can be placed on the statement of the prosecutrix who has changed her statement while recording her second statement under Section 164 Cr.P.C. He has submitted that the petitioner is an elderly person and is maternal uncle of the prosecutrix in relation. He has submitted that the petitioner has no criminal antecedents and he has never been implicated in any other case except the present one. He submits that the petitioner lodged the FIR against the four accused initially named in the FIR as they attacked the petitioner. He submits that even otherwise the prosecutrix already stands examined and the petitioner is not in a position to influence the prosecution witnesses and hence, in the overall facts and circumstances of the case, the petitioner deserves to be granted bail.

Learned State counsel has opposed the submissions made by learned counsel for the petitioner. He has submitted that the prosecutrix though major, however, she has specifically named the petitioner in the statement under Section 164 Cr.P.C. recorded on 19th August, 2020. He has submitted that the petitioner has misused his position being maternal uncle of the prosecutrix who is divorcee. He submits that the prosecutrix has specifically deposed that it was the petitioner under whose influence, she falsely named the four accused in her initial version in the FIR. However, thereafter, she came out with the truth and disclosed about the complicity of the petitioner. He submits that the prosecutrix has also been examined by the trial Court as PW-1 and she has supported the case of the prosecution. She specifically deposed that the petitioner had abducted her and thereafter, he raped her. He further submits that as per the instructions from SI

Dharminder, the petitioner is not involved in any other case. He has submitted that the prosecutrix was medically examined, however, no semen was detected. He has also submitted that out of 18 prosecution witnesses, 05 witnesses already stand examined including the prosecutrix.

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

Evidently, the prosecutrix is of the age of majority. She was allegedly abducted on 10th July, 2020 and thereafter, she was recovered on 20th July, 2020. In her initial version, she named four accused who kidnapped her and thereafter, committed rape with her. However, she deposed in her statement under Section 164 Cr.P.C. as well regarding the same however on 19th August, 2020, she gave second statement under Section 164 Cr.P.C. wherein complicity of the petitioner was disclosed. On the basis of the same, the investigation was conducted and the challan was presented against the petitioner whereas, other four accused who were named by the prosecutrix were found innocent. During the course of trial, the prosecutrix is also examined. As submitted by learned State counsel, though the prosecutrix was medically examined, however, as per the FSL report, no semen was detected. There is nothing on record to show that the petitioner has any criminal antecedents. Out of 18 prosecution witnesses, 05 witnesses already stand examined including the prosecutrix and hence, the petitioner is not in a position to influence the prosecution witnesses.

The allegations and the counter-allegations in the FIR would be assessed by the trial Court only after conclusion of the trial. The trial of the case will take sufficient long time. However, confining itself to the prayer made for bail, this Court finds that 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.

27.09.2022
m. sharma

(RAJESH BHARDWAJ)
JUDGE

Whether speaking/reasoned

:

Yes/No

Whether reportable

:

Yes/No