

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

CRM-M- 32041-2021

Date of decision : 27.07.2022

Arbaaz @ Rahul

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR.JUSTICE RAJESH BHARDWAJ

Present: Mr. Sarfraj Hussain, Advocate for the petitioner.

Mr. Kirpal Singh, AAG, Haryana.

RAJESH BHARDWAJ, J. (Oral)

The present petition is filed under Section 439 Cr.P.C. by petitioner Arbaaz @ Rahul seeking grant of regular bail in case FIR No.681 dated 12.09.2019, registered under Sections 363, 341, 376 of IPC and Section 4 of Protection of Children from Sexual Offences Act, 2012 at Police Station Sadar Palwal, District Palwal.

As per facts of this case the present FIR was lodged on the basis of the complaint filed by the victim, wherein it was alleged that on 11.09.2019 in the midnight her neighbour namely Arbaaz @ Rahul informed her that her goat got unleashed. She went outside and at that moment she saw Sabir s/o Amin, Rahul s/o Kasam, Asif s/o Asin. They caught hold of her and covering her mouth took her towards agricultural fields. There turn by turn they committed rape upon her. She was raped for about one to two hours and she became unconscious and thereafter she did not know how she came back home. On the basis of this complaint FIR

was lodged and the investigation commenced. On the investigation of this case, her medical was conducted and the statement of victim was recorded under Section 164 Cr.P.C. and the petitioner was arrested on 16.10.2019. During the investigation out of the three accused two accused namely Sabir and Asif were found innocent. The petitioner has approached the learned Additional Sessions Judge, Palwal praying for the grant of bail. After hearing the parties the learned Additional Sessions Judge declined the same vide order dated 31.03.2021.

Aggrieved by this, the petitioner has approached this Court for grant of regular bail.

Learned counsel for the petitioner vehemently contends that the petitioner has been falsely implicated in this case. He submits that in the facts and circumstances the implication of the petitioner in this petition is only because the prosecutrix is less than 18 years of age. He submits that as per the facts and circumstances of the case the occurrence had taken place in the midnight when the whole family was sleeping and in the presence of the whole family this is unbelievable that the petitioner could have forcibly taken the prosecutrix from her home to the agricultural fields as alleged in the FIR. He further submits that the victim has not only named the petitioner, however, in all three accused were named but two out of them were found innocent during investigation. He submits that the false FIR was lodged by the victim. He further submits that the victim was medically examined and from the perusal of the medical report there was no external injury found on the body of the victim and even the Hymen was mentioned as old torn. He submits that rape of the victim by three accused as alleged is not probable as alleged by the victim. He submits that the petitioner is behind bars since 16.10.2019 and as on date the trial is

being conducted. He submits that after framing of charge it is evident from the record of the trial court that the prosecutrix kept avoiding her appearance before the trial Court to prolong this trial and finally on the direction of this Court she appeared for her examination. He submits that even otherwise the material witnesses already stands examined though they have supported the case of the prosecution. He has further submitted that an application under Section 319 Cr.P.C. for summoning of other accused is pending consideration and in case the same is allowed the witnesses already examined will be summoned again for examination and as such the trial of the case will take long time to conclude and no purpose will be served by keeping the accused in custody for such a long time. He submits that the petitioner has no criminal antecedents and hence in the facts and circumstances of the present case the petitioner deserves to be granted bail.

Learned State counsel submits that the prosecutrix is minor and she has supported the case of the prosecution since beginning. He also submits that the allegations of the prosecutrix are also medically corroborated and DNA was also found positive. However, he affirms that out of 17 prosecution witnesses till date only 09 witnesses have been examined. He also submits that the prosecutrix and the material witnesses already stands examined. He has admitted that application under Section 319 Cr.P.C. is still pending. He further submits that as per the record the petitioner is not facing prosecution in any other criminal antecedents except this case.

Heard.

Admittedly the prosexutrix is minor and the petitioner is behind bars since 16.10.2019. As per allegations in the FIR there are three

accused out of them two were declared innocent. The Court has been apprised that an application for summoning the rest of the co-accused under Section 319 Cr.P.C., has been moved and the same is pending before the trial Court. It is also apparent from the record of the case that the petitioner is behind bars from last about three years and till date almost half of the witness have been examined by the trial Court. There is nothing on record to show that the petitioner has any criminal antecedents prior to this case. The veracity of the allegations would be assessed by the trial Court on the basis of evidence produced before it by the parties.

In the totality of the facts and circumstances of the case the trial of the case will take sufficient time to conclude and no useful purpose will be served by keeping the accused in custody for such a long period, I find that learned counsel for the petitioner succeeds in making out a case for grant of bail.

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 trial Court/Duty Magistrate. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

(**RAJESH BHARDWAJ**)
JUDGE

27.07.2022

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Whether speaking/reasoned Yes/No
Whether Reportable Yes/No