

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(204)

CRM-M-33720-2021(O&M)

Date of Decision: 25.2.2022

Harjit Singh @ Goldy

--Petitioner

Versus

State of Punjab

--Respondent

CORAM:- HON'BLE MR. JUSTICE RAJESH BHARDWAJ.

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

Ms. Sakshi Bakshi, A.A.G., 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.

The present petition has been filed under Section 439 Cr.P.C for grant of regular bail to the petitioner in FIR No.0012 dated 2.2.2021 registered under Sections 376, 511 IPC and section 4 of POCSO Act (offence under Section 18 of POCSO Act was added later on) at Police Station, Tanda District Hoshiarpur.

As per facts of the case, present FIR was lodged by the mother of the victim (name concealed). The allegations in the FIR are that the complainant is mother of the victim, who is a child of 4 ½ years. On 1.2.2021 at about 6 PM the victim was playing outside the home. When the husband of the complainant came home the child was playing outside. After some time she was not found there. They searched for her but failed. However, after some time they heard the cries of the victim and they proceeded towards the field where they found the victim child in semi nude condition and the present petitioner was also present there in a semi nude condition. Later on they approached police station and the FIR in question

was lodged and a prayer was made to take action against the culprit.

The investigation commenced and the petitioner was arrested on 2.2.2021. He approached learned Addl. Sessions Judge, Hoshiarpur for grant of bail, however, after hearing the parties, the same was declined vide order dated 9.7.2021. Aggrieved by the same petitioner has approached this court for grant of bail.

Learned counsel for the petitioner has vehemently contended that the petitioner has been clandestinely implicated in this case as he had lent Rs.2 lakh to the father of the victim and on asking to return the same, the present FIR was lodged against him. Counsel further submits that initially the FIR was lodged under sections 376, 511 IPC and section 4 of POCSO Act, however, later on section 4 of POCSO Act was deleted and section 18 of POCSO Act was added. Counsel submits that the FIR lodged against the petitioner is for attempting to rape the victim. He has drawn the attention of this Court to the report of FSL, wherein no human semen was detected. Counsel submits that ocular version is not medically corroborated. It is further submitted that the victim child was also produced as PW-5 before the learned Trial Court, however, the Trial Court came to the conclusion that the child was not able to answer the questions and hence found her to be incompetent to appear as a witness. However, it was mentioned by the Trial Court that the petitioner was produced in the court through Video Conferencing and on being shown to the victim child she did not identify him. It is further submitted that petitioner has been falsely and maliciously implicated in the present case. It is also submitted that majority of the witnesses already stand examined and even from that perspective the petitioner cannot be apprehended to influence the witnesses.

On the other hand, learned State counsel has opposed the submissions made by counsel for the petitioner. It is submitted that the victim is a child and there are specific allegations against the petitioner, however, she candidly acknowledges the fact that the present FIR is qua attempting the rape on the victim. State counsel has informed the Court that out of the total 14 prosecution witnesses 8 have been examined including all the material witnesses.

I have heard learned counsel for the parties at length and have gone through the records carefully.

The petitioner is behind bars since 2.2.2021. The offence alleged is attempt to rape against the petitioner. The veracity of the allegations would be evaluated by the Trial Court after conclusion of the trial by appreciating the complete evidence led by the parties. However, it is apparent that the material witnesses already stand examined. This Court finds that counsel for petitioner succeeds in making out a case for grant of bail to the petitioner.

In the totality of facts and circumstances and without making any observation on merits, present petition is allowed. Petitioner be enlarged on bail on his furnishing bail/surety bonds subject to satisfaction of Trial Court/Duty Magistrate, concerned. Nothing stated herein shall be treated as an expression on the merits of the case.

(RAJESH BHARDWAJ)
JUDGE

25.2.2022

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