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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-34328-2021 (O&M)

1.

Reshma Devi

.... Petitioner

Versus

State of Haryana

.... Respondent

2.

CRM-M-26446 of 2021

Mahender

....Petitioner

Versus

State of Haryana

....Respondent

Date of decision : 18.02.2022

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Jagjeet Beniwal, Advocate and
Mr. Rohit Mittal, Advocate
for the petitioners.

Mr. Vishal Kashyap, DAG, Haryana.

RAJESH BHARDWAJ, J. (ORAL)

CRM-3844-2022

Application is allowed as prayed for.

Annexures P-5 to P-7 are taken on record.

CRM-M-34328-2021

This order will dispose of abovesaid two petitions which have
arisen out of the same FIR.

Prayer in the present petitions is for grant of regular bail to the petitioners in case FIR No.404 dated 29.11.2019, under Sections 363, 366-A of the Indian Penal Code and Sections 370, 427, 120-B, 354-D, 34 IPC and Sections 6 and 17 of POCSO Act (subsequently added), registered at Police Station Kanina, District Mahendergarh.

Brief facts of the case are that the FIR was lodged by Kali daughter of Dhanpat wherein, she alleged that she is resident of Village Padtal and on that date at about 04:00 AM in the night, victim-A and victim-B were taken away by the accused Shamsher on the motorcycle. It was requested that the action be taken against the accused Shamsher. The age of the minors are 17 years and 16 years respectively. In pursuance to FIR, the investigating agency came into action and the victims were recovered on 29.11.2019. Their statements under Section 164 Cr.P.C. were also recorded. Petitioner-Reshma Devi was arrested on 05.06.2020 and petitioner-Mahender was arrested on 17.03.2020. Thereafter, they approached learned Sessions Judge, Narnaul for grant of bail, who after hearing counsel for the parties, declined the same vide her orders dated 20.06.2020 in respect of Mahender and 17.07.2020 in respect of Reshma Devi. Aggrieved by the same, petitioners approached this Court by way of filing the present petitions for grant of regular bail.

Learned counsel for the petitioners have vehemently contended that the petitioners have been falsely implicated in the FIR. They have submitted that the petitioners are roped in this FIR on the false and frivolous allegations. It has been submitted that from the bare reading of the FIR, it is

apparent that the petitioners are not named in the FIR and the allegations are specifically mentioned against the co-accused Shamsher. They submit that the statements of the victims were also recorded under Section 164 Cr.P.C. wherein they levelled the allegations against the petitioners and thus, deposed in favour of the prosecution. However, learned counsel for the petitioners vehemently contend that statements under Section 164 Cr.P.C. were recorded after due deliberations with the family members of the prosecutrices. They have submitted that both the prosecutrices and the complainant have been duly examined by the trial Court now. The copies of the statements have been placed on record. Perusal of the same shows that of the victim-Ms.'P' examined as PW-1, another victim Ms.'PL' has been examined as PW-2 and the author of the FIR i.e. mother of the victim 'P' has been examined as PW-3. They further submit that one of the victim was married with co-accused Shamsher who got pregnant also.

Learned counsel for the petitioners submits that all these three crucial witnesses have not supported the case of the prosecution and hence, on the request of learned Public Prosecutor they have been declared hostile. It is submitted that from the last more than 1 year and 10 months, petitioners are behind the bars. As the material witnesses have not supported the case of the prosecution, false implication of the petitioners is writ large. Even otherwise, as they duly stand examined, there is no apprehension whatsoever which can be projected against the petitioners for tampering with the prosecution evidence. Hence, the petitioners deserve to be enlarged on regular bail.

Learned State counsel opposes the submissions made by learned counsels for the petitioners. He submits that both the prosecutrix are minor and even if it is assumed that they are consenting party, that has no relevance in the eyes of law as both the victims are minor. He further submits that in all, there are five accused, out of which, four accused are behind the bars and one is at large. He candidly acknowledged that three material witnesses have not supported the case of the prosecution. However, out of 36 prosecution witnesses as on date, 08 witnesses already stand examined.

I have heard learned counsel for the parties and perused the records.

Evidently, both the petitioners are behind the bars since 05.06.2020 and 17.03.2020 respectively. Both the victims and complainant are duly examined and admittedly they have not supported the case of the prosecution. Even otherwise, the allegations against the petitioners are regarding facilitating the alleged offence, whereas, the main allegation in the FIR are against the co-accused Shamsher, who is also behind the bars. The veracity of the allegations would be evaluated by the trial on the conclusion of the evidence to be led before it by the parties. However, the material witnesses have not supported the case of the prosecution. PW-1 Ms. 'P' stated before the trial Court that she went to Gwalior, Gujarat and Jodhpur with co-accused Shamsher from their home along with cousin sister i.e. the second victim. They did not say anything to their family members about their journey. During this journey, nobody had committed any wrong

act with them. She further deposed that she was in relationship with accused Shamsher against the wishes of her family members. She also stated that she did not know anything about this case. The another victim 'PL' has also deposed on the similar lines and the author of the FIR i.e. mother PW-3 also deposed on the same lines. In the overall facts and circumstances of the case, it is apparent that the trial of the case will take sufficient time and no useful purpose will be served by keeping the petitioners in custody for such a long time. Keeping in view the abovesaid facts, this Court finds that learned counsels for the petitioners have succeeded in making out a case for grant of regular bail. Accordingly, the present petitions are allowed and the petitioners are ordered to be released on bail on their 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.

18.02.2022
m. sharma

(RAJESH BHARDWAJ)
JUDGE

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