

CRM-M-35789-2021 (O&M)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(229)

CRM-M-35789-2021 (O&M).
Date of Decision:-20.04.2022.

Vikki

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. J.P. Jangu, Advocate for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

RAJESH BHARDWAJ, J. (Oral)

Prayer in the present petition is for grant of regular bail to the petitioner in case FIR No.161 dated 22.12.2020 under Sections 376 (2) (n), 506 IPC and Section 6 of the POCSO Act, registered at Police Station Women Sirsa, District Sirsa.

As per the factual matrix of the case, the present FIR was lodged by the victim (name concealed). The sum and substance of the allegations is that the victim is 17 ½ years of age and is a student of 12th class. About a year back, she was getting coaching from Computer Center, opposite Town Park, Sirsa. She used to travel by bus. During this period, she came in contact with Vikki i.e. the petitioner. Thereafter, their relationship developed. On one occasion, the petitioner asked her to develop physical relationship with him but she refused. Later on he committed rape upon her by extending threat to her life. Due to same, she

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became pregnant and she disclosed the same to her mother. Thereafter, she was admitted in Tomar Hospital, where her medical examination was conducted and she gave birth to a baby girl but somehow her baby died on the same night.

On the registration of the FIR, the investigation commenced and the petitioner was arrested on 22.12.2020. During investigation, the statement of the prosecutrix was recorded under Section 164 Cr.P.C. on 23.12.2020 where she reiterated the submissions made in the FIR. Her medical examination was also conducted. The investigating agencies sent the samples for FSL and DNA report. The petitioner approached the Court of learned Additional Sessions Judge, Fast Track Special Court, Sirsa for grant of bail. After hearing the counsel for the parties, the learned Additional Sessions Judge declined the same vide order dated 08.07.2021. Aggrieved by the same, the petitioner approached this Court by way of this petition for grant of regular bail.

It has been contended by the counsel for the petitioner that the petitioner has been roped in this case on the basis of false and frivolous allegations. He submitted that the petitioner has been booked only for the reasons that the prosecutrix is less than 18 years of age. He submits that the allegations of rape and pregnancy of the prosecutrix are without any rhyme and reason and the prosecution has no evidence for proving the allegations against the petitioner. He has submitted that during investigation, the investigating agency sent the sample for the DNA test and after receipt of the DNA report, the same was found to be negative. He has drawn attention of this Court to the FSL report wherein it is mentioned that the DNA profile obtained from item No.8-A is compared with DNA profile of

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Item No.1, 2, 6 and 7. On examination of the same, the allelic pattern item No.1 and 2 does not match with the allelic pattern of item No.6 and 7. The item No.6 and 7, as per the report, belongs to the petitioner-Vikki. He submits that from the DNA report received, it is confirmed that the ocular version of the prosecution is not medically corroborated. He has further vehemently argued that now the prosecutrix and her mother both have been examined by the trial Court as PW-2 and PW-3. A copy of their deposition before the trial Court has been placed before this Court. He submits that both the material witnesses have not supported the case of the prosecution and the prosecutrix was declared hostile. In her deposition, the prosecutrix has stated that she did not know accused-Vikki, who was present in the Court through video conferencing. She further deposed that accused-Vikki did not make any physical relations with her at any point of time and she never registered any case against him. Similarly, her mother, who has been examined as PW-3 also deposed that the victim was not married at the time of her pregnancy, however, she was engaged with Chander Parkash and the victim never told her about her pregnancy. She further deposed that the victim never told anything about accused-Vikki. Thus, she was also declared hostile. Counsel for the petitioner submits that the case of the prosecution falls flat as neither the ocular version is medically corroborated nor the material witnesses have supported the case of the prosecution. Hence, the petitioner deserves to be enlarged on bail.

Learned counsel for the State, on the other hand, has opposed the submissions made by the learned counsel for the petitioner and submitted that the prosecutrix is less than 18 years of age and thus, a minor.

He submits that there were specific allegations against the petitioner. When

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the victim was produced before the Judicial Magistrate for recording her statement under Section 164 Cr.P.C., she duly supported the allegations made by her in the FIR. However, learned State counsel candidly acknowledges that the DNA report is negative and both the material witnesses have not supported the case of the prosecution during their examination before the trial Court. He submits that out of total 23 prosecution witnesses, 03 have been examined including the material witnesses i.e. the prosecutrix and her mother.

Heard.

The petitioner is behind the bars since 22.12.2020. As argued by learned counsel for the petitioner, the DNA report was found negative and thus, did not match with the sampling taken from the petitioner. Besides this, both the material witnesses i.e. the prosecutrix and her mother have not supported the case of the prosecution.

The veracity of the allegations would be finally assessed by the trial Court on conclusion of the trial Court on the basis of the appreciation of the evidence led by both the parties. This Court would refrain itself from commenting anything upon the merits of the case, however, confining to the prayer made by the learned counsel for the petitioner for grant of regular bail, this Court finds that the counsel for the petitioner succeeds in making out a case for grant of bail to the petitioner. The trial of the case is likely to take sufficient time and no useful purpose will be served by keeping the petitioner in custody for such a long time.

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

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herein shall be treated as an expression of opinion on the merits of the case.

(RAJESH BHARDWAJ)
JUDGE

April 20, 2022.

sandeep

Whether speaking/reasoned:-

Yes/No

Whether Reportable:-

Yes/No