

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

CRM-M-31764-2022 (O&M)

Date of Decision: 28.7.2022

Gagandeep Singh

..... Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Karandeep S. Sidhu, Advocate, for the petitioner.

Mr. Rakeshinder Singh Sidhu, AAG, Punjab.

Rajesh Bhardwaj, J. (ORAL)

CRM-25629-2022

Allowed as prayed for.

Main case

Prayer in the present petition is for the grant of regular bail to the petitioner in a case FIR No.107 dated 23.6.2021, registered under Sections 376, 506 IPC and Section 4 of POCSO Act, 2012 (Section 411 IPC added vide Rapat No.36 dated 14.8.2021), at Police Station Kot Bhai, District Sri Mukatsar Sahib.

As per factual matrix of the case, the present FIR was lodged by the victim herself (name concealed). The sum and substance of the allegations in the FIR is that the victim was 16 years of age and studying in Class 10th. They used to purchase milk from Gagandeep Singh i.e. the petitioner. He used to come daily to their house in the absence of her parents. Her parents do labour work. One day the petitioner said that he shall take her somewhere on someday. He threatened her with dire consequences in case she disclosed any thing about him to her parents. On

19.6.2021, Gagandeep Singh came at about 11:00 p.m., when the victim was asleep. He woke her up and threatened and asked her to accompany him. Her mouth was closed with cloth and he forced her to sit on his motorcycle and took her to the fields. She was raped forcibly and thereafter on 20.6.2021 at about 3:30 a.m., he dropped her at her home on his motorcycle. After coming home, she disclosed everything to her parents and thereafter, a complaint was lodged with the Police with a request to take legal action against the accused. The FIR was lodged and investigation commenced. Statement of the victim was recorded under Section 164 Cr.P.C., wherein she supported her allegations made in the FIR. The petitioner was arrested on 24.6.2021. The petitioner approached the learned Additional Sessions Judge, Sri Muktsar Sahib for grant of bail, who after hearing the parties, declined the same vide its order dated 25.5.2022. Aggrieved by the same, the petitioner approached this Court by way of filing the present petition for grant of regular bail.

Learned counsel for the petitioner vehemently contends that the petitioner has been falsely and frivolously implicated in the present FIR. He submits that the alleged occurrence has taken place in the intervening night of 19/20.6.2021. He submits that allegedly the petitioner entered into the house of the victim and woke her up and thereafter, took her on the motorcycle forcibly, is totally unbelievable. He submits that from the facts and circumstances of the case, no coercion on the part of the petitioner can be drawn. He has submitted that the occurrence took place in the intervening night of 19/20.6.2021, whereas, the FIR in question has been lodged after an unexplained delay of 3 days. He asserts that the FIR has

been lodged after due deliberations and thus with a coloured version. He submits that during the course of trial, the victim has been examined as PW-1 and her father has been examined PW-2. He has appended copy of their statements made before the trial Court. He submits that both these material witnesses have not supported the case of the prosecution and on the request of the learned Public Prosecutor, they have been declared hostile. He submits that once, the prosecutrix and her father have not supported the case of the prosecution, false implication of the petitioner is writ large. He submits that even otherwise, when the material witnesses already stands examined, there cannot be any apprehension that the petitioner can tamper with the evidence of the prosecution and thus, he deserves to be granted bail.

Learned State counsel has opposed the submissions made by learned counsel for the petitioner and has submitted that the prosecutrix has supported the case of the prosecution while recording statement under Section 164 Cr.P.C. He submits that during the investigation, swabs were taken and sent to the FSL for DNA sampling and the DNA report was matched with petitioner. However, he candidly acknowledges that the prosecutrix and her father have not supported the case of the prosecution while having been examined as prosecution witnesses. He further submits that in all there are 21 prosecution witnesses, out of which 2 witnesses have been examined till date.

Heard.

The petitioner is behind bars since 24.6.2021. Admittedly, the occurrence in question took place in the intervening night of 19./20.6.2021,

whereas, the FIR has been lodged after a delay of 3 days. The prosecutrix and her father have been examined as PW-1 and PW-2 and they did not support the case of the prosecution. Out of total 21 prosecution witnesses, 2 material witnesses stands examined by the trial Court. The prosecutrix did not support the case of the prosecution. She even submitted that her statement under Section 164 Cr.P.C. was recorded under the pressure of the Police. The veracity of the allegations would be evaluated by the trial Court only after conclusion of the trial. In the overall facts and circumstances of the case, I am of the opinion that learned counsel for the petitioner has been able to make out a case for grant of regular bail to the petitioner. The trial is likely to take time in its conclusion. Accordingly, the present petition is allowed and the petitioner is ordered to be released on bail 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.

28.7.2022
sharmila

(RAJESH BHARDWAJ)
JUDGE

Whether Speaking/Reasoned	:	Yes/No
Whether Reportable	:	Yes/No