

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(210)

CRM-M-33958-2022(O&M)
Date of Decision: 09.09.2022

Rajesh Kumar

--Petitioner

Versus

State of Haryana & another

--Respondents

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

Present:- Mr. Parminder Singh, Advocate for the petitioner.

Mr. Kirpal Singh, A.A.G., Haryana.

RAJESH BHARDWAJ.J (Oral)

The present petition has been filed under Section 439 Cr.P.C seeking the benefit of regular bail to the petitioner in case FIR No.93 dated 11.5.2022 under sections 323, 363, 366-A, 452, 506, 376(2)(n) IPC and section 6 of POCSO Act, registered at Police Station, Women, district Karnal.

As per factual matrix, the FIR in question was lodged by the prosecutrix herself, wherein it was alleged that in the year 2019 Rajesh Kumar i.e. the present petitioner used to come to her house occasionally and forcibly committed rape with her. Later on she disclosed the same to her parents upon which they complained the same to Raj Kumar i.e. father of petitioner Rajesh Kumar regarding his misdeeds with their daughter. On this Raj Kumar told them that they will marry their son with their daughter once she attains the age of majority. Thereafter petitioner started keeping an evil eye on her and she was given beatings when she was carrying the pregnancy of about 9 months. A request was made to take legal

action against the culprit.

The investigation commenced. The prosecutrix was medically examined and her statement under section 164 Cr.P.C was recorded. The petitioner was arrested on 13.5.2022. He approached the court of Addl. Sessions Judge-cum Fast Track Special Court, Karnal for grant of bail, however, after hearing the parties, the same was declined vide order dated 20.7.2022. Aggrieved by the same petitioner has approached this court for grant of bail.

Learned counsel for the petitioner vehemently contends that the petitioner has been falsely implicated in the present case. He submits that both prosecutrix and petitioner were in consensual relationship. He submits that false allegations have been levelled against the petitioner pertaining to year 2019 so as to implicate him in a heinous offence under the POCSO Act. He submits that both petitioner and prosecutrix are not only married but parents of one child as well. To buttress his arguments counsel submits that prosecutrix has been examined by the Trial Court as PW-1. He has placed on record copy of the testimony of the prosecutrix, wherein she did not support the case of prosecution and was thus declared hostile. Prosecutrix has deposed that she got married with the petitioner on 26.4.2020 and a son is born out of their wedlock. She further deposed that she is living in her matrimonial home. Counsel submits that petitioner has no criminal antecedents and he deserves to be granted the benefit of bail.

On the other hand, learned State counsel on instructions from SI Davinder Kaur submits that there are specific allegations against the

petitioner. He submits that even if it is assumed that the prosecutrix was a consenting party, still her consent has no legal sanctity as she was a minor at the time of occurrence. He candidly submits that prosecutrix has been examined by the Trial Court and she has not supported the case of prosecution and was thus declared hostile. It is submitted that out of total 15 prosecution witnesses, only one witness i.e. the prosecutrix has been examined. He further submits that as per information provided to him petitioner is not involved in any other case.

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

Admittedly, both petitioner and the prosecutrix are duly married and have been blessed with a son as well. The prosecutrix has been examined before the learned Trial Court and she has not supported the case of prosecution. Rather she has deposed that she is married with the petitioner and they are blessed with a son. She has further deposed that she is living in her matrimonial home. There is nothing on record to show that petitioner has any criminal antecedents. The veracity of the allegations levelled against the petitioner would be assessed by the Trial Court only upon conclusion of the trial. This court would refrain itself from commenting on the merits of the case, as the allegations and counter allegations would be assessed only after evaluation of the complete evidence to be led by both the sides before the Trial Court. The trial would take sufficiently long time in its conclusion.

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 the 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

09.09.2022

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