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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-39488-2021(O&M)

Date of Decision: January 28, 2022

Shri Ram

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR.JUSTICE RAJESH BHARDWAJ

Present: Mr.Ashwani Gaur, Advocate, for the petitioner.

Mr.Vishal Kashyap, DAG, Haryana.

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RAJESH BHARDWAJ, J.

Matter has been taken up through video conferencing via Webex facility in the light of the Pandemic Covid-19 situation and as per instructions.

CRM-2498-2022

Application is allowed as prayed for and Annexures P-4 and P-5 are taken on record.

CRMM39488-2021

Instant petition has been filed under Section 439 Cr.P.C. praying for grant of regular bail to the petitioner in case FIR No.242, dated 24.06.2021, under Sections 8 of the Protection of Children from Sexual Offences Act, 2012 and Section 120-B, 354-B, 376, 452, 506, 511 IPC, registered at Police Station Kalanaur, District Rohtak.

As per the factual matrix of the case, the present FIR was registered by the prosecutrix herself wherein it was alleged that she is 16

years of age and studying in 10th standard. Her father passed away 12 years ago. On 23.06.2021, her mother had gone to the fields to sow the paddy. She was alone at home. Finding the complainant alone, Shri Ram s/o Gian Chand, i.e. the petitioner, trespassed into her house and gagged her mouth and tried to commit rape upon her. Her clothes were also torn away by the accused and she was threatened to be killed. When the complainant tried to raise the alarm, the accused ran away. In the evening when her mother returned home, she disclosed the same to her and the present FIR was lodged to take the legal action against the culprits. As a result the petitioner was arrested on 25.06.2021. The petitioner approached the learned Additional District and Sessions Judge, Rohtak, for the grant of bail. However, after hearing the parties, the same was declined by the learned Additional Sessions Judge, Rohtak, vide its order dated 25.08.2021. Aggrieved by the same, the petitioner approached this Court by way of present petition.

Learned counsel for the petitioner vehemently contends that the petitioner has been falsely implicated in this FIR. The allegations of attempt to commit rape and under the POCSO Act are deliberately added to implicate the petitioner in a false and frivolous case. He submits that the medical of the prosecutrix was conducted and there was no mark or injury shown in the MLR which would show that the ocular version of the prosecutrix is totally false and frivolous as the same is not medically corroborated. He further submits that when her statement under Section 164 Cr.P.C. was recorded by JMIC on 25.06.2021, she totally changed the version of the FIR in the same. He submits that since beginning there was no consistency in the statement made by the prosecutrix and thus, the false implication of the petitioner was evident. He vehemently contends that after

lodging of the FIR, the case was duly investigated and challan was presented and after framing of the charge, the Court has commenced with the recording of evidence. He further submits that the victim before the trial Court has been examined as PW3 whereas her mother has been examined as PW5. He has placed on record the copies of their statements recorded before the trial Court. He submits that a perusal of the same would show that the prosecutrix who is 17 years of age had deposed before the trial Court that her signatures were obtained by the police on a blank paper and the accused present in the Court who has been identified by her has not committed any offence against her. On the request of the learned public prosecutor, she was declared hostile by the Court. On the same day, her mother has been examined as PW5 and she also deposed on the same line by stating that the accused committed no offence with her daughter. She further deposed that in fact she wanted the police to take action against the mother of the accused whereas the police has proceeded against the accused. Hence, on the request of public prosecutor she was also declared hostile by the trial Court. Counsel submits that the false implication of the petitioner is writ large in view of the evidence of the material witnesses recorded before the trial Court. He submits that as the petitioner is in custody since 25.06.2021 and prosecution is left with no material evidence to prove its case, he deserves to be enlarged on bail.

On the other hand learned State counsel has opposed the submissions made by counsel for the petitioner. He has submitted that the prosecutrix is a minor and there is a presumption against the petitioner. However, he has also submitted that the FSL report has been received which has been found positive. However, he candidly acknowledges that both the

material witnesses, i.e. the victim and her mother, have not supported the prosecution witnesses and they have been declared hostile. He further submitted that in all there are 17 witnesses, out of which 5 have been examined so far.

Heard.

The petitioner is behind bars since 25.06.2021. The material witnesses PW3 and PW5, i.e. the victim and the mother have not supported the case of the prosecution. The veracity of the allegations and counter-allegations would be examined by the trial Court on the basis of the evidence led by the respective parties. However, without going into the merits of the case, this Court would confine itself to the prayer made for the grant of bail.

In view of the overall attending circumstances, the Court finds that the counsel succeeds in making out the case for the grant of bail to the petitioner. Accordingly, the petition is allowed and the petitioner is ordered to be enlarged on bail during the trial.

Bail to the satisfaction of concerned trial Court/Duty Magistrate.

Nothing stated hereinabove shall be construed as an expression of opinion on the merits of the case.

January 28, 2022
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(RAJESH BHARDWAJ)
JUDGE

1. Whether speaking/reasoned ?
2. Whether reportable ?

Yes/No
Yes/No