

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(217)

CRM-M-35326-2020

Date of Decision: 22.02.2022

Kalpana

--Petitioner

Versus

State of Punjab

--Respondent

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

Present:- Mr. K.S. Brar, Advocate for the petitioner.

Ms. Sakshi Bakshi, A.A.G., Punjab.

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.0056 dated 14.3.2020 under sections 376, 366-A, 34, 328, 120-B I.P.C and Sections 3 & 4 of POCSO Act, registered at Police Station, Canal Colony, District Bathinda.

As per factual matrix, the FIR in question was lodged by Bansi Lal son of Ram Bharose. The crux of the allegations in the FIR is that the complainant was working as a Lab Assistant in the Milk Plant, Bathinda. He has two sons and one daughter (name concealed), who is aged about 17½ years. On 10.2.2020 she got ready for going to school but did not go. When his wife returned home she found her minor daughter missing. They tried their level best to search her, however, failed in same. They expressed their apprehension that their daughter has been kidnapped by someone and has been confined in illegal custody. A request was made to search his daughter and take legal action against the culprit.

The investigation commenced and petitioner was arrested on 2.8.2020. She approached learned Addl. Sessions Judge, Bathinda for grant of bail, however, after hearing the parties, the same was declined vide order dated 12.10.2020. Aggrieved by the same petitioner has approached this court for grant of bail.

Learned counsel for the petitioner vehemently contends that petitioner has been falsely implicated in the present case. Counsel submits that from the bare perusal of the FIR and the Whatsapp chats placed on record, it is evident that brother of the petitioner i.e. Amarjit Singh @ Billa and the alleged victim were in consensual relationship and there was no complicity of the petitioner in the alleged offence. However, the victim being marginally below 18 years of age the petitioner, who is sister of the main accused has been roped in the present case deliberately under the pressure of the family members of the victim. Counsel submits that from the facts of the case it is evident that victim went missing on 10.4.2020 and she was recovered after about 4 months i.e. on 12.8.2020. It is further submitted that the fact that main accused Amarjit Singh @ Billa and victim remained together for 4 months is self speaking that the relationship between the main accused and victim was consensual. On the recovery of victim her statement was recorded, wherein it was alleged that main accused, who is brother of the present petitioner stayed with the victim in the house of the petitioner. It is submitted that in all there are 3 accused i.e. Amarjit Singh @ Billa, present petitioner and her husband Sikander Singh. Sikander Singh i.e. husband of the present petitioner has already been granted bail by the court below. Counsel submits that petitioner has been falsely implicated in the present case and no offence as alleged is made

out against her. It is submitted that the material witnesses already stand examined. Hence the present petitioner deserves to be enlarged on bail.

On the other hand, learned State counsel has opposed the contentions raised by counsel for petitioner. She submits that victim is a minor and hence her consent has no legal sanctity in the eyes of law. She further submits that there are specific allegations that main accused and victim stayed in the house of the petitioner, where victim was raped. It is submitted that husband of the petitioner namely Sikander Singh has already been enlarged on bail, whereas main accused Amarjit Singh @ Billa is yet to be arrested.

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

Admittedly, petitioner is the sister of the main accused Amarjit Singh @ Billa. The husband of the petitioner namely Sikander Singh has already been released on bail. Main accused and the victim stayed in the house of the petitioner, where the alleged rape took place. Material witnesses in the present case have already been examined and hence there cannot be any apprehension whatsoever projected on the part of the petitioner of interfering with the on going 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 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 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

22.02.2022

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