

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(225)

CRM-M-35400-2020

Date of Decision: 17.02.2022

Sanjay @ Sanju

--Petitioner

Versus

State of Haryana

--Respondent

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

Present:- Mr. Bhagwat Dayal Sharma, Advocate for the petitioner.

Mr. Vishal Kashyap, D.A.G., Haryana.

RAJESH BHARDWAJ.J (Oral)

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

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.44 dated 24.6.2019 under section 376(2)(n) I.P.C and Section 67 A of Information Technology Act, registered at Police Station, Women Police Station, Assandh, District Karnal.

As per factual matrix, the FIR in question was lodged by father of the prosecutrix namely Ram Mehar. The sum and substance of the allegations levelled in the FIR is that the house of accused Sanjay is situated near to their house and being neighbours they used to visit each other. In the first week of April, his daughter went to the house of the accused for some domestic work, where the petitioner threatened her with knife and committed rape with her. Under the fear of death she did not disclose anything to them and one week thereafter she told them that petitioner made

her objectionable video and that if she wanted the same she should come to his house. In this way he started blackmailing her and committed rape with his daughter. Thereafter, his daughter narrated the whole story to them. One day they found prosecutrix feeling some pain in her abdomen and she was taken for medical examination, where she was found to be pregnant. A prayer was made to take legal action against the culprit.

In pursuance to the FIR, petitioner was arrested on 26.8.2019. He approached learned Addl. Sessions Judge, Karnal for grant of bail, however, after hearing the parties, the same was declined vide order dated 20.7.2020. 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 FIR. He submits that the allegation of the prosecutrix being minor is totally false and frivolous as it is evident from the reading of the FIR itself wherein the petitioner is being prosecuted for the offence under I.P.C and not under the offence of POCSO Act. Counsel has further relied upon the School Leaving Certificate issued on 11.7.2019 by the Govt. School of village Rangrooti Khera (5407), wherein the date of birth of the prosecutrix is mentioned as 6.7.2000. Counsel submits that the FIR in question has been lodged on 24.6.2019 and thus it is evident that the prosecutrix was more than 18 years of age at the time of alleged occurrence. He has further submitted that during the investigation the investigating agency had sent the sample of the foetus for DNA Test for verifying the allegations made in the FIR and now the DNA report has been received and which is found negative. It is vehemently contended that as the DNA report pertaining to the foetus had

been found negative, the ocular version of the prosecution is not medically corroborated and thus the false implication of the petitioner is further strengthened. Counsel further submits that at the most if allegations in the FIR are taken to be as gospel truth, the relationship between the petitioner and the prosecutrix would be consensual as both are of the age of majority. Counsel submits that whether in such circumstances a case under Section 376 I.P.C is made out or not would be debatable. It is further contended that prosecutrix is now married and is mother of a child as well. The village Panchayat has also mentioned in a resolution that there is no malice between the parties. Counsel further submits that even otherwise the prosecutrix stands examined before the Trial Court and there are number of contradictions in her statement made before the Trial Court. Counsel submits that petitioner is an unmarried young boy at the threshold of his life and is languishing in jail since 26.8.2019 and hence in the overall facts and circumstances of the case he deserves to be enlarged on bail.

On the other hand, learned State counsel on instructions from ASI Sudesh has submitted that there are specific allegations against the petitioner regarding the rape committed by him, however, he candidly acknowledges that there is no offence recorded under the provisions of POCSO Act in the FIR and as per the information provided by the IO the prosecutrix was major on the date of occurrence. He further submits that out of 18 prosecution witnesses only 4 including the prosecutrix have been examined so far. It is also submitted that prosecutrix has duly supported the case of the prosecution.

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

It is evident from the facts of the case that the petitioner and the prosecutrix are of the age of majority. Thus, the allegations made in the FIR regarding the prosecutrix being minor are prima facie not established. The investigating agency sent the sample of the foetus for DNA matching and the same was found to be negative. Prima facie, it can be deciphered that whether the petitioner is the biological father of the fetus as alleged, would be a debatable question. The prosecutrix though supported the case of the prosecution, however, she is remarried and mother of a child and has been duly examined by the Trial Court. In these eventualities any apprehension projected by the prosecution that the petitioner can interfere or exert any pressure upon the prosecutrix does not survive any more. Admittedly, out of the total 18 prosecution witnesses 4 have been examined so far and hence it is evident that trial would take considerable time in its conclusion. In the overall facts and circumstances of the case, counsel for petitioner succeeds in making out a case for bail.

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

17.02.2022

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