

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

CRM-M-36993-2022

Date of decision : 26.08.2022

Aasamdin

.....Petitioner

versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Munfaid Khan, Advocate
for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

RAJESH BHARDWAJ, J. (Oral)

Petitioner has approached this Court praying for grant of regular bail in case FIR No.05 dated 18.02.2022, under Sections 376-D, 365, 506 of Indian Penal Code and Section 67-A of Information Technology Act, 2000, registered at Women Police Station Mewat, District Nuh.

As per the facts of the case, the complaint was lodged by the prosecutrix wherein it was alleged that on 16.02.2022 when she went along with other woman of neighbourhood went to Arawali Hills to bring wood near Village Badoji then accused Aasam i.e. the petitioner caught hold her from behind and gagged her mouth. The accused along with the co-accused committed rape upon her turn by turn against her consent. They also made her video in naked condition. She was threatened not to disclose the incident to anyone otherwise, they would viral the video on internet. She alleged that the video made by Aasam was sent on mobile of her brother-in-law (jeth) namely, Mubarik. She disclosed the incident to her husband and thereafter, on the basis of complaint, the FIR was lodged

and investigation commenced. The statement of the prosecutrix was recorded under Section 164 Cr.P.C and she was medically examined. The petitioner was arrested on 19.02.2022. The petitioner approached learned Additional Sessions Judge, Fast Track Court, Nuh praying for grant of bail. However, after hearing counsel for the parties, the same was declined by learned Additional Sessions Judge, Fast Track Court, Nuh vide order dated 27th July, 2022. Aggrieved by the same, petitioner is before this Court praying for grant of regular bail.

It has been contended by learned counsel for the petitioner that the petitioner has been falsely implicated in this case. He has submitted that petitioner and the prosecutrix both are of the age of majority. The allegations levelled by the prosecutrix are totally based on false and frivolous allegations. He has submitted that though there are allegations pertaining to the rape committed with the prosecutrix and making the video viral, however, the same are not corroborated by any other evidence and hence, except bald allegations, there is nothing against the petitioner. To buttress his arguments, he has argued before this Court that during trial, trial Court has examined the prosecutrix as PW-2 and her brother-in-law as PW-3. Copy of their depositions are placed on record. He submits that both these witnesses have not supported the case of the prosecution. The prosecutrix while entering into witness box has deposed that nothing wrong has happened to her at any point of time and thus, on the request of learned APP, she was declared hostile. In the same way, her brother-in-law who was cited as a witness for the allegations that the objectionable video was sent on his mobile has also deposed that he has no knowledge of this case and he never gave any complaint to the police.

Thus, on the request of learned APP, he was also declared hostile. Learned counsel for the petitioner submits that the prosecutrix being of age of majority has not supported the case of the prosecution and thus, the prosecution has not left with any credible evidence and therefore, further incarceration of the petitioner is totally unwarranted. He submits that in the facts and circumstances of the case, petitioner deserves to be granted regular bail.

Learned State counsel has opposed the submissions made by counsel for the petitioner. He, on instructions from Insp. Rajbala, has submitted that the prosecutrix has made specific allegations against the petitioner regarding committing gang rape by the petitioner and the co-accused. He submits that the mobile was recovered from the petitioner and sent to the FSL for examination and as per the report received the same is negative, however, the DNA report is still awaited. He submits that as per the information received, the petitioner has no criminal antecedents. He has candidly acknowledged that both the material witnesses i.e. prosecutrix and brother-in-law have not supported the case of the prosecution. He further submits that out of 15 prosecution witnesses, 04 witnesses already stand examined including the prosecution and brother-in-law.

I have heard counsel for the parties and perused the record.

Evidently, the petitioner is behind bars since 19.02.2022. The prosecutrix is of the age of majority. Both the prosecutrix and the brother-in-law have been examined by the trial Court and has not supported the case of the prosecution. They have dishonored the allegations made in the FIR. The FSL report received regarding the examination of the mobile is

also negative. The veracity of the allegations would be assessed by the trial Court only on the conclusion of the trial on the basis of the evidence led before it. This Court would refrain from commenting anything on the merits of the case. However, confining to the prayer made for the grant of bail, this Court is convinced that the counsel for the petitioner succeeds in making out a case for grant of regular bail.

Accordingly, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail/surety bonds 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.

26.08.2022
m. sharma

(RAJESH BHARDWAJ)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No