

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No. 215

CRM-M-36757-2022

Date of decision : 27.09.2022

Zenul @ Mohd Zenul

..... Petitioner

VERSUS

State of UT, Chandigarh

..... Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr.Davinder Lubana, Advocate, for the petitioner.

Mr.Akashdeep Singh, Addl.P.P, UT, Chandigarh.

DEEPAK SIBAL, J. (ORAL)

The present petition has been filed under Section 439 Cr.P.C. for the grant of regular bail in FIR No.141 dated 03.09.2021 registered under Sections 363, 366, 376(3) IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012 at Police Station Sector 34, Chandigarh.

The petitioner is being prosecuted for having raped a minor girl.

Learned counsel for the petitioner contends that the petitioner is 24 years old; he does not have any other criminal antecedents; he is in custody since 04.09.2021; all material prosecution witnesses, including the alleged victim, stand examined in the petitioner's trial; in her statement before the Trial Court the alleged victim has stated in her examination-in-chief that the petitioner raped her in the afternoon of a day in May, 2021 whereas in her cross-examination she stated that such incident took place in the night of a day in May, 2021; such statement of hers falsifies her claim; the doctor, who examined the alleged victim, appeared before the Trial Court as PW-6 and stated in her cross-examination that since the alleged incident is of May, 2021 and the alleged victim had come to her for her examination in September, 2021 she cannot give an opinion if the alleged victim was subjected to aggravated penetrative sexual assault; there is no forensic

evidence to connect the petitioner with the crime he is accused of and that since 14 prosecution witnesses still remain to be examined in the petitioner's trial, the same will take a long time to conclude.

Learned State counsel opposes the grant of bail to the petitioner on the ground that the petitioner has raped a minor girl and that if released on bail he may influence the trial.

The effect of the contradiction in the alleged victim's statement with regard to the time of the alleged rape as also the afore referred statement of the doctor that since the alleged incident was of May, 2021 and the alleged victim had come to her for her examination in September, 2021, she cannot opine if the alleged victim was subjected to aggravated penetrative sexual assault, shall be debated during the course of the petitioner's trial. The absence of forensic evidence shall also be debated. Nonetheless, the petitioner is 24 years old; he is in custody since 04.09.2021; he does not have any other criminal antecedents; all material prosecution witnesses, including the alleged victim, stand examined in the petitioner's trial and that since 14 prosecution witnesses still remain to be examined in the petitioner's trial, the same is likely to take a long time to conclude.

In view of the above, the present case is considered to be a fit one in which the petitioner be directed to be released on regular bail. Resultantly, subject to the satisfaction of the CJM/Duty Magistrate, Chandigarh, who shall insist upon at least two heavy local sureties, the petitioner is directed to be released on bail.

It is clarified that the above observations have been made only for the limited purpose of deciding the present regular bail application and the same would not be construed to be an expression of opinion on the merits of the case.

27.09.2022
shamsher

[DEEPAK SIBAL]
JUDGE

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