

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

CRM-M-41339-2021 (O&M)

Date of Decision: 24.01.2022

Ashu

..... Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Parveen Sharma, Advocate, for the petitioner.
Mr. Vishal Kashyap, Deputy Advocate General, Haryana.
Mr. Vishal Garg Narwana, Advocate, for the complainant.

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.

Prayer in the present petition is for the grant of regular bail to the petitioner in a case FIR No.133 dated 6.6.2020, registered under Sections 323, 354, 363, 366-A, 34 IPC and Section 8 of Protection of Children from Sexual Offences Act, 2012 (Section 376-B IPC and Sections 5 and 6 of POCSO Act, 2012 added later on), at Police Station HSIIDC Barhi, District Sonipat.

As per factual matrix of the case, the FIR in question was lodged by the victim herself, wherein it was alleged on 5.6.2020 at 10:00 pm, she was giving meal to the dog, then suddenly three boys, namely, Ashu, Shakti and one another boy Bhairav came there and they forcibly took her on motorcycle. Thereafter, she was chased by Manjit, Veeka, Shoku and Boda and then in the meantime, they thrown her from the terrace of the house and ran away. Her father took her to the hospital at Gannaur. The FIR

was lodged to take legal action against the culprits. Her statement under Section 164 Cr.P.C. was recorded, wherein she supported the allegations levelled in the FIR. The petitioner was arrested on 30.6.2020. He approached the learned Additional Sessions Judge, Sonapat for grant of bail, who after hearing the parties, declined the same vide its order dated 13.9.2021. Aggrieved by the same, the petitioner approached this Court by way of filing the present petition for grant of regular bail.

Learned counsel for the petitioner has contended that the petitioner has been falsely implicated in the present case. The allegation levelled are false and frivolous and no offence as alleged is made out against the petitioner. He submits that the present FIR has been lodged by the victim only under pressure of her family members. To buttress his arguments, he submits that after the investigation the challan was presented and charges were framed and the trial Court proceeded with the recording of the evidence. He has drawn the attention of this Court to the examination of the material witnesses i.e. the victim as PW-7, her father as PW-8 and her mother as PW-9 before the trial Court. The copies of their statements have been placed on record. He submits that all the three material witnesses have failed to support the case of the prosecution and on the request of learned Public Prosecutor, they have been declared hostile. He further submits that a perusal of the statements made before the trial Court would show that the prosecutrix deposed that she sustained some injuries due to fall from the staircase. She further deposed that she has seen the accused through video conferencing and he was not one of the accused who committed any sexual assault upon her. On the same line her parents deposed before the trial

Court. Learned counsel for the petitioner submits that all the material witnesses have not supported the case of the prosecution and the prosecution left with no authenticated evidence and hence, the petitioner deserves to be enlarged on bail.

Learned counsel for the complainant has vehemently opposed the submissions made by learned counsel for the petitioner. He submits that the victim is 17 years of age and she has supported the case of the prosecution while recording her statement under Section 164 Cr.P.C. however, before the Court she deposed under pressure of the accused.

Learned State counsel submits that in all there are 3 accused and one being juvenile has already been granted bail. So far the present petitioner is concerned, he is behind bars since 30.6.2020. He candidly acknowledges that the material witnesses have not supported the case of the prosecution. He further submits that in all there are 32 prosecution witnesses, out of them 10 witnesses already stand examined.

Heard.

The petitioner is behind bars since 30.6.2020. The material witnesses i.e. the victim and her parents have not supported the case of the prosecution. Out of total 32 prosecution witnesses, only 10 witnesses have been examined so far. The veracity of the allegations would be evaluated by the trial Court only after conclusion of the evidence led by both the parties. The trial of the case will take sufficiently long time and no useful purpose will be served by keeping the petitioner in custody for such a long time. In the overall facts and circumstances of the case, I am of the opinion that learned counsel for the petitioner has been able to make out a case for grant

of regular bail to the petitioner. Accordingly, the present petition is allowed and the petitioner is ordered to be released on bail 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.

24.01.2022
sharmila

(RAJESH BHARDWAJ)
JUDGE

Whether Speaking/Reasoned	:	Yes/No
Whether Reportable	:	Yes/No