

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

CRM-M-38723-2022

Date of decision : 02.09.2022

Irfan @ Changa

.....Petitioner

versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Ms. Nidhi Garg, Advocate
for the petitioner.

Mr. Kirpal Singh Thakur, AAG, Haryana.

RAJESH BHARDWAJ, J. (Oral)

Prayer in the present petition is for grant of regular bail to the petitioner in case FIR No.414 dated 31.05.2021, under Section 365 of IPC (Sections 363, 366, 376 of IPC and Section 4 of POCSO Act added later on), registered at Police Station Quilla Panipat, Panipat.

As per the facts of the case, the present FIR was lodged by father of the victim wherein, it was alleged that he has two sons and three daughters and one of the daughter is aged 15 years. She left the home on 31.05.2021 at about 11:00 AM without disclosing anything. It was requested to search his daughter. On the basis of the complaint, FIR was registered and investigation commenced. During investigation, the victim was recovered on 2nd June, 2021. She was produced before the learned Judicial Magistrate Ist Class on the same date wherein, she deposed that on 31st May, 2021 when she was coming from Urdu classes, she met Irfan and his friend. They took her to the Brick-Klin where Irfan forcibly committed rape upon her. He kept her there in the night and thereafter, he left her at her home. He threatened her to remain with him, failing which, he would

kill her. Thereafter, she was medico-legally examined. The petitioner was arrested on 5th June, 2021. He approached the learned Additional Sessions Judge, Fast Track Court (POCSO), Panipat praying for grant of bail. However, after hearing both the sides, learned Additional Sessions Judge, Fast Track Court, declined the same vide its order dated 20th April, 2022. Aggrieved by the same, petitioner is before this Court praying for grant of regular bail.

It has been contended by counsel for the petitioner that the petitioner has been falsely implicated in this case. She has submitted that the prosecutrix went missing from home on 31.05.2021 and thereafter, she was produced before the Court on 2nd June, 2021. She has submitted that the FIR annexed was registered by father of the victim wherein, neither petitioner was named nor he was suspected by the complainant-father. She has submitted that the allegations in the FIR are false and frivolous on the face of it as the prosecutrix remained away from her home for about 02 days without informing anyone. There is nothing on record to show that she ever resisted the alleged act committed by the petitioner. To buttress her arguments, she has submitted that the prosecutrix and her father both have been examined by the trial Court as PW-1 and PW-2 respectively. She has submitted that both these material witnesses have not supported the case of the prosecution rather the prosecutrix deposed before the trial Court that the accused present in the Court neither harassed her nor committed any sexual assault upon her. Similarly, her father who is the author of the FIR was examined as PW-2 and he deposed on the same lines as deposed by the victim. She submits that resultantly, both these material witnesses were declared hostile. She submits that the petitioner has no criminal antecedents. She has further advanced the arguments that even

otherwise now the material witnesses already stand examined and the possibility of the petitioner influencing the material witnesses also does not survive any more. In the overall facts and circumstances, she submits that the petitioner deserves to be granted bail.

Learned State counsel, on the other hand, has opposed the submissions made by counsel for the petitioner. He, on instructions from ASI Tasvir Singh, submits that the prosecutrix is minor and there lies a presumption against the petitioner. However, he candidly acknowledges that both the prosecutrix and the complainant have not supported the case of the prosecution and they are declared hostile. He submits that the prosecutrix was medico-legally examined and as per the FSL report, human semen was detected. However, DNA report is not yet received. He submits that out of 18 prosecution witnesses, 07 witnesses already stand examined including the material witnesses i.e. complainant and the victim. He submits that as per the instructions provided, the petitioner has no criminal antecedents as he has never been involved in any other case except the present case.

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

Admittedly, the prosecutrix went missing on 31st May, 2021. Though, in her statement under Section 164 Cr.P.C., she has levelled the allegations against the petitioner, however, while being examined as prosecution witness as PW-1, she did not support the case of the prosecution. Not only the prosecutrix, her father who is the author of the FIR, was examined by the trial Court and he equally did not support the case of the prosecution. Out of 18 prosecution witnesses, 07 witnesses already stand examined. The possibility of the petitioner of influencing the

witnesses does not survive any more. There is nothing on record that the

petitioner has any criminal antecedents. The veracity of the allegations would be assessed only after the conclusion of the trial. However, this Court would refrain itself from commenting anything on the merits of the case.

The trial of the case will take sufficient long time. However, confining itself to the prayer made for bail, this Court finds that 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.

02.09.2022
m. sharma

(**RAJESH BHARDWAJ**)
JUDGE

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