

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

CRM-M-38849-2022

Date of decision : 21.11.2022

Kuneel

.....Petitioner

versus

State of UT Chandigarh

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Sanjeev Bishnoi, Advocate
for the petitioner.

Mr. A.M. Punchhi, Public Prosecutor with
Mr. Anupam Bansal, Addl. PP
for UT Chandigarh assisted by
ASI Rajesh Kumar.

Mr. S.K. Bishnoi, Advocate
for the complainant.

RAJESH BHARDWAJ, J. (Oral)

Petitioner has approached this Court praying for grant of regular bail in case FIR No.0071 dated 21.06.2021, under Sections 376, 452, 506 of IPC and Section 342 IPC added later on, registered at Police Station Mauli Jagran, District UT Chandigarh.

As per the facts of the case, the FIR was lodged on the statement of the prosecutrix (name concealed). It was alleged that on 21.06.2021 at about 02:30 PM when she was sleeping after closing the door, Kuneel who is her neighbourer opened the door. Before she could understand, he pushed her inside and closed the door. Thereafter, he committed rape with her and threatened to kill her if she disclosed anything to her husband. Her husband reached home at about 08:30 PM and thereafter, she explained the same to her husband and to her grand-

mother. They informed the police and prayed for taking legal action against him. On registration of the FIR, the investigation commenced. The prosecutrix was medically examined and she was produced before the Judicial Magistrate for recording her statement under Section 164 Cr.P.C. Petitioner was arrested on 21.06.2021. He approached the Court of learned Judge, Fast Track Special Court, Chandigarh. However, after hearing both the sides, learned Fast Track Special Court declined the same vide order dated 17.08.2022. Aggrieved by the same, petitioner is before this Court praying for grant of regular bail.

Learned counsel for the petitioner has vehemently contended that the petitioner and the prosecutrix both are of the age of majority and the petitioner has been falsely implicated in this case. He submits that the prosecutrix is a married woman and from the bare perusal of the allegations made in the FIR, the allegations are nothing but a cock and bull story. He submits that there is no probability of truth in the allegations. He submits that the prosecutrix has levelled the allegations that the petitioner and she both are neighbourers and she has been compelled by her family members to implicate the petitioner falsely. He submits that the investigation is complete and the charges were also framed and now the trial Court has examined the prosecutrix as PW-8. He has drawn the attention of this Court to the deposition of the prosecutrix made before the trial Court. He submits that the prosecutrix has not supported the case of the prosecution and thus, on the request of learned PP, she has been declared hostile. He further submits that even the grandmother of the prosecutrix who has been examined as PW-5 has not supported the case of the prosecution and declared hostile. He submits

that the prosecutrix who is of the age of majority and has disown her allegations made in the FIR would prove the innocence of the petitioner. He submits that the petitioner has no criminal antecedents and even otherwise the material witnesses have already been examined by the prosecution and hence, the petitioner is not even in a position to influence the prosecution witnesses. He has submitted that in the facts and circumstances of the case, the petitioner deserves to be granted regular bail.

Learned State counsel has opposed the submissions made by counsel for the petitioner. He submits that the prosecutrix though of the age of majority, however, she is the author of the FIR wherein she has specifically levelled the allegations of rape against the petitioner. He submits that during investigation, her statement was recorded under Section 164 Cr.P.C. where she again deposed on the line of the allegations made in the FIR. He submits that the prosecutrix was medically examined and the swabs were sent to the CFSL. He submits that the report from the CFSL is received where the presence of the semen on the t-shirt has been confirmed. He submits that the report has further confirmed the DNA profile recovered which matched with Kuneel i.e. the petitioner. However, he fairly submits that while being examined as prosecution witnesses, the prosecutrix has not supported the case of the prosecution. He submits that out of 15 prosecution witnesses, 08 witnesses already stand examined including the prosecutrix. He has also confirmed that even the grand-mother of the prosecutrix has not supported the case of the prosecution. However, he submits that the medical evidence produced clearly established the complicity of the

petitioner in the offence. He submits that as per the instructions provided, the petitioner has no criminal antecedents as he is not involved in any other case except the present case.

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

Admittedly, both the petitioner and the prosecutrix are of the age of majority. The prosecutrix who is the author of the FIR has not supported the case of the prosecution. Besides this, her grand-mother who is examined as PW-5 has also not supported the case of the prosecution. There is nothing on record to show that the petitioner has any criminal antecedents. The veracity of the allegations would be assessed only after the conclusion of the trial and on the appreciation of evidence led by both the parties.

The trial of the case will take sufficiently long time. This Court would refrain itself from commenting anything on the merits of the case. 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.

21.11.2022
m. sharma

(RAJESH BHARDWAJ)
JUDGE

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