

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(222)

CRM-M-43322-2021

Date of Decision: 01.02.2022

Sarwan Kumar

--Petitioner

Versus

State of Punjab

--Respondent

CORAM:- HON'BLE MR. JUSTICE RAJESH BHARDWAJ.

Present:- Mr. A.P.S. Rehan, Advocate for the petitioner.

Ms. Sakshi Bakshi, A.A.G., Punjab.

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.

The present petition has been filed under Section 439 Cr.P.C seeking the benefit of regular bail to the petitioner in case FIR No.70 dated 30.7.2019 under section 376 I.P.C and section 4 of POCSO Act (vide DDR No.33 dated 3.8.2019 offence under Section 4 of POCSO Act was deleted and Section 6 of POCSO Act was added), registered at Police Station, Sujanpur, District Pathankot.

As per factual matrix, the present FIR was lodged by the victim (name withheld), who is 14 years of age. It was alleged that she was studying in 9th class in Govt. Senior Secondary School, Basroop. On 29.7.2021 at about 5.30 PM when she was present at home and her mother had gone outside to bring fodder then her father Sarwan Kumar i.e. the present petitioner came in drunken condition and sent her two younger sisters outside for playing. When she went inside the room her father

followed her in the drunken condition and caught hold her from arms and breast and torn off her clothes. He committed excesses with her without her consent. Thereafter she disclosed the same to her mother and grandmother. Her grandparents gave beatings to her father who ran away from home and threatened to kill her. It was alleged that her father had committed rape upon her and the relatives were trying to make efforts for a compromise. She approached the police along with her mother and maternal uncle and made a request for taking legal action against the culprit.

The petitioner was arrested on 2.8.2019. He approached learned Addl. Sessions Judge, Pathankot for the grant of bail. After hearing the parties learned Addl. Sessions Judge, Pathankot dismissed the same vide order dated 16.8.2021. Aggrieved by the same petitioner approached this Court by filing the present petition for grant of bail.

Learned counsel for the petitioner has vehemently contended that the petitioner is the father of the complainant and he is innocent. Counsel submits that the petitioner has been falsely implicated in the present case. He further submits that the victim has been examined by the learned Trial Court as PW-2 and as she has not supported the case of the prosecution, on the request of learned Addl. P.P she was declared hostile. Counsel submits that as the victim herself has not supported the case of the prosecution, the petitioner deserves to be enlarged on bail.

On the other hand, learned State counsel has vehemently opposed the averments made by learned counsel for the petitioner. She submits that in pursuance to the interim orders dated 26.10.2021 and 2.12.2021 the status report has been filed by way of affidavit dated 27.11.2021 of Ravinder Singh, D.S.P, Dhar Kalan, District Pathankot.

Learned State counsel has also drawn attention of this Court to the status report filed by Mangal Singh, D.S.P., Sub Division Rural Pathankot, District Pathankot dated 31.1.2022. Counsel submits that during investigation statement of the victim under Section 164 Cr.P.C was recorded and the medical of the victim was conducted. In view of the status report dated 31.1.2022 it has been submitted that the DNA Test has not been conducted by the Chemical Examiner, Kharar. However, as per report of the Chemical Examiner, it was opined that the possibility of sexual intercourse cannot be ruled out. Learned State counsel has further submitted that the trial is progressing and out of the total 19 prosecution witnesses, 4 have been examined. It is submitted that taking into consideration the facts and circumstances of the case and the age of the victim, the petitioner does not deserve any leniency and hence is not entitled for the bail as prayed for.

I have heard learned counsel for the parties at length and have gone through the records made available.

Admittedly the victim is 14 years of age. There were specific allegations of rape levelled by the victim against the petitioner, who is none other than her father. Prima facie, report of the Chemical Examiner also opines that the possibility of the sexual intercourse cannot be ruled out. There are 19 prosecution witnesses cited in all and out of which only 4 have been examined.

Looking into the facts and circumstances of the case, this Court finds that the allegations against the petitioner are serious in nature. He has been alleged to have committed a heinous offence against a minor. In the overall facts and circumstances of the case, this Court is not inclined to

grant bail to the petitioner as neither it is in the interest of the minor nor in the interest of the on going trial pending before the learned Trial Court.

Resultantly, the present petition being devoid of any merit, is dismissed.

(RAJESH BHARDWAJ)
JUDGE

01.02.2022

lucky	Whether speaking/reasoned:	Yes/No
	Whether Reportable:	Yes/No