

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

CRM-M-41479-2022

Date of decision : 10.11.2022

Amarjit Singh @ Vicky

.....Petitioner

versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Ramandeep, Advocate
for the petitioner.

Mr. Karunesh Kaushal, AAG, Punjab.

RAJESH BHARDWAJ, J. (Oral)

Prayer in the present petition is for grant of regular bail to the petitioner in case FIR No.280 dated 10.09.2020, under Section 376-D and Section 6 of POCSO Act (Amended), 2012, 2019 (Section 67-B of IT Act, 2000 added later on), registered at Police Station Tripri Patiala, District Patiala, Punjab.

Adumbrated facts of the case are that the present FIR was lodged by the victim (name concealed) wherein she deposed that her mother has died and she does household work. She has studied upto 6th standard in National Public School, Modia Road, Tripri, Patiala. It was further alleged that about a month ago, she went to the shop of Nanak Singh who asked her to bring a glass of water from his house. On his asking, she went inside the house where three boys namely, Vicky (petitioner), Rajan and Lakhan Singh who are her neighbourers were waiting. On seeing them, she got scared and tried to run outside, however, Nanak Singh closed the main door. Thereafter, Rajan and Lakhan Singh forcibly took off her clothes and Vicky committed rape with her.

However, she raised noise and they threatened her to be killed. A request was made to take legal action against the culprits. On registration of the FIR, investigation commenced and the petitioner was arrested on 11.09.2020. The prosecutrix was medically examined and her statement under Section 164 Cr.P.C. was recorded. The petitioner approached the Court of learned Additional Sessions Judge, Fast Track Special Court, Patiala praying for grant of bail. However, after hearing counsel for the parties, learned Additional Sessions Judge, declined the same vide order dated 31.01.2022. 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. He has submitted that from the reading of the allegations in the FIR, it is highly improbable that in the day-light the petitioner could have committed the offence as alleged. He submits that the co-accused named in the FIR have already been granted bail by this Court. He further submits that the petitioner has no criminal antecedents and has been falsely implicated in this case. He has submitted that the alleged occurrence has taken place a month prior to lodging of the FIR which in itself sufficient to draw the conclusion that the FIR has been lodged after due deliberations. To buttress his arguments, learned counsel for the petitioner has submitted that now the prosecutrix and her father have been examined by the trial Court as PW-1 and PW-2 respectively. He has drawn the attention of this Court to the depositions of both these witnesses. He submits that both these material witnesses have not supported the case of the prosecution and thus, were declared hostile on the request of learned APP. He submits that once the

prosecutrix and her father have not supported the case of the prosecution, false implication of the petitioner is writ large. He further submits that the co-accused have already been granted bail and hence, in the overall facts and circumstances of the case, further incarceration of the petitioner is not warranted and hence, he deserves to be granted bail.

Learned State counsel on the other hand submits that the prosecutrix-victim is minor and hence, there lies a presumption against the accused. He submits that out of 21 prosecution witnesses, 06 witnesses have already been examined. He has fairly submits that the victim and her father have not supported the case of the prosecution. He submits that there are specific allegations of rape against the petitioner. However, he has submitted that the co-accused have been granted bail He also submits that as per the information, he is not involved in any other case.

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

Petitioner is behind bars since 11.09.2020. Two of the co-accused who were named in the FIR have already been granted bail by this Court. The prosecutrix and her father have been examined as PW-1 and PW-2 and they have not supported the case of the prosecution. Perusal of the deposition made by the victim while appearing as PW-1 would show that she deposed that she did not identify the accused who were present through video conferencing and they did not commit any wrong act or rape upon her and hence, she was declared hostile on the request of learned APP. Similarly her father who had been examined as PW-2 has also not supported the case of the prosecution and has been declared hostile. There is nothing on record to show that the petitioner

has any criminal antecedents.

The trial of the case will take sufficient long time. The veracity of the allegations would be assessed by the trial Court after appreciation of the evidence to be led by the respective parties before it. This Court would refrain 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.

10.11.2022
m. sharma

(RAJESH BHARDWAJ)
JUDGE

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