

Date of decision : 23.09.2022

versus

Adumbrated facts of the case are that the FIR was lodged by mother of the victim wherein, it was alleged that her daughter i.e. the victim was 10 years of age and on the date of occurrence, she was alone at home. When she returned, the child told her that Subhash Shah who reside on second floor had caught hold her and took near the Mumti and against her wishes he made physical relations with her by threatening to kill her. After hearing, the complainant's mother went to the police station to lodge the complaint with request to register the FIR and to take

legal action against the culprits. On the basis of the complaint made, the FIR was registered and the investigation commenced. The prosecutrix was medically examined and her statement was recorded under Section 164 Cr.P.C.. The petitioner was arrested on 14.06.2019. He approached the Additional Sessions Judge, Kapurthala praying for grant of regular bail. After hearing counsel for the parties, learned Special Court declined the same vide its order dated 06.07.2021. Aggrieved by the same, the petitioner is before this Court praying for grant of regular bail.

Learned counsel for the petitioner who is appearing as Legal Aid Counsel has vehemently submitted that the petitioner has been falsely and frivolously implicated in this case. She submits that the petitioner is languishing in jail from last more than three years. However, there is no progress in the trial since then. She has submitted that from the perusal of the allegations in the FIR and the medical report, the allegations levelled against the petitioner are false and frivolous on the face of it. She has submitted that the victim in the case is alleged to be 10 years of age whereas, the petitioner is 35 years of age. She has drawn the attention of this Court to the medical report of the prosecutrix wherein sexual assault as alleged is not corroborated. She has submitted that the petitioner had no source to defend himself and thus, he is being defended through Legal Aid Counsel. She has submitted that the challan in this case was filed on 11.09.2019 and thereafter, the charges were framed on 23.02.2021, despite that till date, not even a single witness has been examined by the trial Court. She submits that the petitioner has no criminal antecedents and he is not in a position to influence any prosecution witness. She submits that the unreasonable incarceration is a total violation of the Fundamental

Right to the life and liberty of the individual. She submits that in the overall facts and circumstances of the case, the petitioner deserves to be granted bail.

Learned State counsel has submitted that the victim in this case is minor and there are specific allegations against the petitioner in the statement recorded under Section 164 Cr.P.C. He further submits that the petitioner is not involved in any other case except the present case. He has submitted that the charges in this case were framed on 23.02.2021 and in all, there are 11 prosecution witnesses, however, none has been examined till date.

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

Admittedly, the petitioner is behind bars since 14.06.2019. The challan was presented on 11.09.2019 and the charges were framed on 23.02.2021. The prosecutrix was medically examined during the investigation. The petitioner has approached this Court through Legal Aid Counsel. This Court find no reasonable justification for not examining even a single witness by the prosecution till date when the petitioner is behind bars from the last more than three years. 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. 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.

23.09.2022
m. sharma

(RAJESH BHARDWAJ)
JUDGE

Whether speaking/reasoned

:

Yes/No

Whether reportable

:

Yes/No