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IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CRM-M-48039-2021

Date of Decision: July 14, 2022

Subhash

.....Petitioner

Versus

State of Haryana

.....Respondent

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

Present: Mr.Jai Vir Yadav, Sr.Advocate with  
Mr.Harshvardhan Ranga, Advocate  
for the petitioner.

Mr.Kirpal Singh Thakur, AAG, Haryana.

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**RAJESH BHARDWAJ, J.(ORAL)**

Instant petition has been filed under Section 439 Cr.P.C. praying for grant of regular bail to the petitioner in case FIR No.0042, dated 14.05.2021, under Sections 114, 323, 341, 342, 365, 379B, 354D, 376D, 506, 201, 34 and 376(2)(h) IPC, registered at Police Station Women, Manesar, Gurugram.

The present FIR was lodged on the statement of the prosecutrix (name concealed) herself. The complaint was lodged with the police and the sum and substance of the allegations made by the prosecutrix is that she has studied upto 8<sup>th</sup> standard and her date of birth is December 2002. Presently, she is residing with her friend Poonam in Gurgaon. On 13.05.2021 at about 11.00 p.m. she alongwith Ahedur and his relative Ajjul were going to purchase meat from Pataudi in celebration of Eid on motorcycle. When they reached near petrol pump, they saw that one scorpio car was following them.

On the way the scorpio car over took them and three boys alighted from it.

They started beating Ahedur and Ajjul and forcibly made all three of them to sit in the Scorpio car. They were taken to one room where all of them turn by turn committed wrong act with the prosecutrix. Not only this, after beating Ajjul even he was compelled to do the wrong act with her. Her obscene video was also made. The complaint was lodged to register the FIR and take the legal action against the culprits. On registration of the FIR, the investigation was commenced and the statement of the prosecutrix was recorded under Section 164 Cr.P.C.. During the course of investigation, Test Identification Parade was also conducted. The petitioner was arrested on 16.05.2021.

The petitioner approached the Court of learned Additional Sessions Judge, (Fast Track Court), Gurugram, praying for grant of bail, who after hearing the parties, declined the same vide order dated 09.11.2021. Aggrieved by the same, the petitioner approached this Court praying for grant of bail.

Learned senior counsel has vehemently contended that the petitioner has been falsely and frivolously implicated in this case. He submitted that the prosecutrix is major and she has named no one in the FIR. He submits that after registration of the FIR, the petitioner was arrested and the investigating agency carried out the Test Identification Parade wherein she did not identify the petitioner. The prosecutrix was produced before the learned Magistrate for recording her statement under Section 164 Cr.P.C. where also she did not utter any word regarding the complicity of the petitioner and thus, he was completely absolved from the allegations levelled. He submits that during investigation, the swabs were taken for

that the DNA report is received and it has been concluded that the DNA profile of seminal stains is not matching with the DNA profile of Subhash, i.e. the petitioner. He submits that now the trial Court has also examined the prosecutrix and two other witnesses, namely, Ahedur and Ajjul as PW3 and PW4 respectively. He submits that all these three witnesses have not supported the case of the prosecution and hence on the request of learned Public prosecutor, they were declared hostile. Learned senior counsel contends that neither the prosecution has any oral nor the medical evidence to support its case against the petitioner. He has submitted that even otherwise the material witnesses already stand examined and hence, further incarceration of the petitioner is totally unwarranted.

Learned State counsel, on instructions from ASI Kiran, submits that in all there are 24 witnesses out of which 20 have been examined and thus, the petitioner does not have any case for bail.

Heard.

Admittedly, the petitioner is behind bars since 16.05.2021. Though the prosecutrix had deposed that she was kidnapped and thereafter raped by three persons, however, no one was named in the FIR. During investigation, the Test Identification Parade was conducted and her statement under Section 164 Cr.P.C. was also recorded. Neither in the Test Identification Parade nor in her statement under Section 164 Cr.P.C. she deposed anything about the complicity of the petitioner. Besides this, while entering into the witness box all the material witnesses do not support the case of the prosecution. Besides this, even the DNA report also found to be negative as the seminal stains did not match with that of the petitioner.

Though the case is at the fag end, however, in the overwhelming facts and

circumstances, this Court finds that the learned senior counsel succeeds in making out a case for grant of bail.

The trial would take some time for its conclusion and no purpose would be served by keeping the petitioner behind the bars for further period.

Application is allowed.

Bail to the satisfaction of trial Court/Duty Magistrate concerned.

Nothing said hereinabove shall be construed to be an expression on the merits of the case.

July 14, 2022  
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( RAJESH BHARDWAJ )  
JUDGE

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|--------------------------------|--------|
| 1. Whether speaking/reasoned ? | Yes/No |
| 2. Whether reportable ?        | Yes/No |