

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

CRM-M-48901-2021

Date of Decision: 10.8.2022

Sukhjinder Singh

..... Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Ashish Aggarwal, Advocate, for the petitioner.

Ms. Sakshi Bakshi, Assistant Advocate General, Punjab.

Rajesh Bhardwaj, J. (ORAL)

Prayer in the present petition is for the grant of regular bail to the petitioner in a case FIR No.43 dated 10.2.2021, registered under Sections 376, 506 IPC, at Police Station Division-B, District Police Commissionerate, Amritsar.

Succinctly, the facts of the case are that the FIR was lodged by the victim herself (name concealed) alleging therein that she is studying in BA second year and became friendly with Sukhjinder Singh i.e. the petitioner through Facebook in the year 2018. Their relationship developed and they started exchanging messages on Whatsapp and calling each other on phone. In November 2018, she went to Amritsar to meet Sukhjinder Singh and thereafter again in May 2019, she went to Baba Sulakhan Singh Saran, where Sukhjinder Singh forcibly developed physical relationship with her. He allegedly gave her sleeping pills and made her video as well. On the strength of the same, he blackmailed her and thus, compelled to establish physical relationship with him without her consent. It was alleged that he called her number of times and threatened her to viral photos and videos. Complaint was made to the Police for registering FIR and to take

legal action against the accused. The FIR was registered and the investigation commenced. Resultantly, the petitioner was arrested on 1.6.2021. Statement of the prosecutrix was recorded under Section 164 Cr.P.C. and she was medically examined. The petitioner approached the Court of learned Addl. Sessions Judge (FTC), Amritsar for grant of bail, who, after hearing the parties, declined the same vide order dated 16.9.2021. Aggrieved by the same, the petitioner has approached this Court by way of filing the present petition for grant of bail.

Learned counsel for the petitioner has submitted that the petitioner and the prosecutrix both are of the age of the majority and on the face of it, it was case of consensual relationship. He has submitted that the prosecutrix belongs to District Sonapat, whereas, as per her own averments, she travelled all the way from Sonapat to Amritsar number of times. The alleged physical relationship between the petitioner and the prosecutrix had taken place in hotels, which are at public place. He submits that there is no iota of resistance seen from the conduct of the prosecutrix. He submits that there were allegations regarding taking photographs and making obscene videos of prosecutrix, however, it has come in the investigation that after thorough investigation these allegations were found to be false. He submits that the petitioner also went to UAE from the year 2000 to 2021 and the allegations made by the prosecutrix are for this period as well when he was not even present in India. He has submitted that even otherwise, it is apparent that the allegation pertaining to the alleged rape pertains to the year 2018, however, the present FIR was lodged in the year 2021 i.e. after an unexplained delay of three years. He vehemently contends that once the petitioner and the prosecutrix both are of the age of the majority, consensual

relationship between them cannot be termed as offence under Section 376 IPC. He has submitted that the petitioner has an unblemished record as he has never been involved in any other criminal case on the earlier occasion, however, he has been falsely and frivolously roped in by the prosecutrix. He submits that the trial Court has already started examination of the prosecution witnesses and for that summons have been issued to the prosecutrix for 11 times, however, despite having been served the summons, she is intentionally not appearing before the trial Court for her examination so as to prolong the incarceration of the petitioner behind bars. He has submitted that this Court vide order dated 26.7.2022 had noted the contention of learned State counsel who had stated that the case is fixed for 5.8.2022 for cross-examination of the prosecutrix. However, despite having been served the summons again the prosecutrix remained absent for her examination before the trial Court. He submits that the case of the prosecution is not even medically corroborated. He submits that false implication of the petitioner is writ large and thus, he deserves to be granted bail.

Learned State counsel submits that there are specific allegations against the petitioner regarding forcibly committing sexual intercourse with the prosecutrix. However, she submits that during the investigation, the allegations pertaining to making of obscene videos etc. were not substantiated. She candidly acknowledges that the prosecutrix has been summoned by the prosecution many times, however, so far she has not made herself available for recording her statement. She also submits that as per the instructions received, the petitioner has no criminal antecedents.

Heard.

Admittedly, both the petitioner and the prosecutrix are of the age of the majority. They came in contact with each other through Facebook as alleged by the prosecutrix herself. The prosecutrix belongs to District Sonapat and as per her averments, she travelled many times from Sonapat to Amritsar, where relationship between both of them took place. The occurrence is said to be of year 2018, whereas, the FIR has been registered in the year of 2021. Besides this as apparent from the record, the prosecutrix has been summoned time and again by the trial Court for about more than 10 times, however, despite the summons, till date she has not made herself available for her examination before the trial Court. This Court cannot be oblivious of the fact that speedy trial is right of every accused. Veracity of the allegations of course would be evaluated by the trial Court only after conclusion of the trial, however, the trial cannot be delayed in a clandestine manner. This Court would refrain itself from commenting anything on the merits of the case, however, considering the prayer for grant of bail to the petitioner, I am of the view that learned counsel for the petitioner has been able to make out a case for grant of regular bail to the petitioner. The trial would take sufficient long time for its conclusion.

Accordingly, the present petition is allowed and the petitioner is ordered to be released on bail 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.

10.8.2022

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Whether Speaking/Reasoned :

Whether Reportable :

(RAJESH BHARDWAJ)

JUDGE

Yes/No

Yes/No