

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

CRM-M-49088-2021

Date of Decision: 25.01.2022

Sandeep

....Petitioner

VS

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Prateek Rathee, Advocate for the petitioner

Mr. Rajneesh Chadwal, AAG Haryana

Mr. Rakesh Dhiman, Advocate for the complainant

SUDHIR MITTAL, J. (Oral)

This is the third application filed by the petitioner for grant of regular bail in FIR No.79 dated 11.12.2019, registered at Women Police Station Rewari, Haryana, under Section 6 of the Protection of Children from Sexual Offences Act, 2012.

According to the FIR, the petitioner committed an aggravated sexual assault on his niece, aged about 11 years and 3 months on the date of the occurrence. The petitioner was arrested on 12.12.2019 and has been in custody since then.

Learned counsel for the petitioner has argued that the petitioner has been falsely implicated on account of matrimonial dispute between the father and the mother of the prosecutrix. They have since divorced and custody of the prosecutrix is with her father. The petitioner is the younger brother of the father of prosecutrix. The facts show that false implication cannot be ruled out. Allegedly, the prosecutrix was sleeping with her aunt (wife of the petitioner) when the alleged incident occurred in the same room. According to the FIR, the complete sexual act was done but in subsequent statements, the complete act has not been mentioned.

There is no medical corroboration of sexual assault. The prosecutrix has been

examined-in-chief and, thus, there are no chances of the petitioner trying to influence her, in case he is granted regular bail. The trial is not likely to be completed at an early date as only 7 out of 23 prosecution witnesses have been examined. There is no other case pending against the petitioner and, thus, he may be granted regular bail.

Learned State counsel as well as counsel for the complainant submit that there is no material discrepancy in the statement of the prosecutrix. The petitioner has committed a heinous act and deserves to be punished therefor. The degree of severity of the offence has multiplied since he is a close relative of the prosecutrix. An application under Section 319 Cr.P.C. has been filed and reply has not been filed thereto despite four dates having gone by. The petitioner himself is, thus, guilty of delaying the trial and cannot seek benefit thereof for grant of bail.

It has, however, not been denied that the prosecutrix has been examined-in-chief and that only 7 out of total of 23 prosecution witnesses have been examined.

The first application for grant of regular bail was dismissed by this Court on merits vide order dated 29.10.2020. No subsequent fact or conduct of the prosecutrix has been brought to my notice, which may impel me to change my opinion on merits of the case. The petitioner cannot seek benefit of delay in conclusion of the trial since the facts show that he himself is delaying the filing of reply to the application under Section 319 Cr.P.C. resulting in non-examination of the prosecution witnesses.

Thus, the petition is devoid of merit and is dismissed.

(SUDHIR MITTAL)
JUDGE

25.01.2022

Poonam Negi

Whether speaking/reasoned

Yes/No

Whether Reportable :

Yes/No