

219 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-46519-2022

Date of decision : 14.10.2022

Vicky @ Captain

.....Petitioner

versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Ms. Riffi Bala Birla, 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.127 dated 08.10.2019, registered under Section 376-DA of IPC and Section 6 of the POCSO Act, 2012 (Section 5 of POCSO Act, 2012 added later on), at Police Station Khui Khera, District Fazilka.

As per the facts of the case, the FIR was lodged by mother of the victim wherein, it was alleged that her daughter/victim (name concealed) is 15 years old. On 03.10.2019, Vicky and Raghubir came to her house and they took her daughter on motorcycle on pretext of her meeting with her father. Thereafter, they committed rape upon her. She went to Salasar Rajasthan on 04.10.2019 and returned on 06.10.2019. On her return, her victim/daughter narrated about the incident and thus, on the basis of the same, she lodged the complaint to take the legal action against the culprits. On the basis of complaint, the FIR was lodged and the investigation commenced. The petitioner was arrested on

27.01.2020. The prosecutrix was medically examined and her statement was recorded under Section 164 Cr.P.C. The petitioner approached the Court of learned Sessions Judge, Fazilka praying for grant of bail, however the same was declined by the learned Sessions Judge, Fazilka vide his order dated 12.04.2021. Aggrieved by the same, the petitioner is before this Court praying for grant of regular bail.

Learned counsel for the petitioner has contended that the petitioner was falsely implicated in this case. She submits that as per the prosecution case, the prosecutrix was medically examined and her samples were taken for DNA sampling. She submits that as per the report of DNA, the conclusion remained inconclusive and thus, no definite opinion was given regarding the allegations made against the petitioner. She further submits that the prosecutrix and her mother, who is the author of the FIR, were examined before the trial Court as PW-4 and PW-3 respectively. She has drawn the attention of this Court to the depositions of both these material witnesses before the trial Court wherein both of them have not supported the case of the prosecution and were declared hostile on the request of learned Public Prosecutor. She submits that the petitioner has no criminal antecedents and in the facts and circumstances of the case, it is apparent that the case of the prosecution is neither medically corroborated nor supported by the material witnesses. She has submitted that even otherwise, majority of the prosecution witnesses already stand examined and thus, the petitioner is not even in a position to influence the prosecution witnesses. She submits that in the facts and circumstances, the petitioner deserves to be granted regular bail.

Learned State counsel, on instructions from ASI Bhagwan Singh, submits that the prosecutrix was minor at the time of occurrence and she has specifically made allegations against the petitioner. She has submitted in her statement recorded under Section 164 Cr.P.C., that the petitioner committed the rape with her. However, he candidly acknowledges that before the trial Court both the complainant and the victim have not supported the case of the prosecution. He has further submitted that out of 21 prosecution witnesses, the prosecution has examined 10 witnesses including the material witnesses. He further submits that as per the instructions, the petitioner has no criminal antecedents.

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

Evidently, the petitioner is behind bars since 27.01.2020. The prosecutrix was medically examined and her samples were taken for DNA sampling. However, as per the DNA report produced, the same remained inconclusive. The prosecutrix and her mother both have been examined by the trial Court and none of them has supported the case of the prosecution and thus, were declared hostile. There is nothing on record to show that the petitioner has any criminal antecedents. Out of 21 prosecution witnesses, 10 witnesses already stand examined.

The veracity of the allegations would be assessed only after appreciation of the evidence led by the respective parties before the trial Court. 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.

14.10.2022
m. sharma

(RAJESH BHARDWAJ)
JUDGE

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