

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(225)

CRM-M-50658-2021

Date of Decision: 30.03.2022

Ashish

--Petitioner

Versus

State of Haryana

--Respondent

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

Present:- Mr. S.K. Panwar, Advocate for the petitioner.

Mr. Vishal Kashyap, D.A.G., Haryana.

RAJESH BHARDWAJ.J (Oral)

The present petition has been filed under Section 439 Cr.P.C for grant of regular bail to the petitioner in FIR No.500 dated 5.7.2021 registered under Sections 148, 149, 323, 506 IPC (later on sections 341, 509 IPC were added and then sections 148, 149 IPC and Section 10 of POCSO Act were deleted and section 34 IPC was added) at Police Station, Kharkhoda, District Sonapat.

As per facts of the case, present FIR was lodged by the prosecutrix (name concealed). The allegations are that on 4.7.2021 when the prosecutrix was coming from the playground after playing and was accompanied by other girls, they were surrounded by the accused including the present petitioner. All the accused abused and misbehaved with the girls and forcibly dragged the prosecutrix in a house. When she opposed they gave blows on her head with some sharp edged thing and also gave beatings with spade handle and lathis. The accused also gave leg blows on the stomach, feet and private parts of prosecutrix and she became unconscious.

The investigation commenced and in pursuance to the same petitioner was arrested on 7.7.2021. He approached learned Addl. Sessions Judge, Fast Track Court, Sonapat for grant of bail, however, after hearing

the parties, the same was declined vide order dated 30.7.2021. He approached this Court by way of filing CRM-M-36696-2021, however, the same was dismissed as withdrawn vide order dated 3.11.2021. Thereafter the petitioner again approached to the court of learned Addl. Sessions Judge, Fast Track Court, Sonapat for grant of bail but the same was again rejected vide order dated 24.11.2021. Aggrieved by the same petitioner has approached this court for the second time for grant of bail.

Learned counsel for the petitioner has vehemently contended that the petitioner has been falsely and frivolously implicated in the present case. He submits that this is a case of version and cross-version. He submits that the alleged occurrence took place on 4.7.2021 and it was the petitioner who was assaulted by the opposite side, however, the police refused to register their version. Having no alternative they approached the court of competent jurisdiction seeking a direction for registering FIR against the culprits. On the direction of the court FIR No.509 dated 9.7.2021 (Annexure P-2) was registered. He submits that the version of the petitioners was not recorded by the police, however, for the same occurrence the version of the prosecutrix was recorded pertaining to the even date i.e. 4.7.2021. Counsel submits that as the present case is of version and cross-version it is a matter of trial to establish who was the aggressor. To buttress his arguments counsel has submitted that now the victim and her sister have been examined by the Trial Court as PW-1 and PW-2 respectively and both have not supported the case of the prosecution and thus have been declared hostile. Counsel has placed on record the copies of the testimonies of PW-1 and PW-2 which would read that on 4.7.2021 while all the girls were playing Kabaddi in playground there arose

a dispute and they received injuries, however, they do not know who inflicted injuries to them. The prosecutrix deposed that the accused present in court neither inflicted injuries to her nor had ever sexually assaulted her. The sister of the prosecutrix also deposed on the same lines. Counsel further submits that though the FIR was registered for the offence under POCSO Act, however, at the time of submission of supplementary challan the offence under Section 10 of POCSO Act and sections 148, 149 IPC were deleted. Counsel submits that as the material witnesses themselves have not supported the case of the prosecution, further incarceration of the petitioner is totally unwarranted and he deserves to be enlarged on bail.

On the other hand learned State counsel on instructions from ASI Ved Pal has also opposed the submissions made by counsel for petitioner. He submits that there are specific allegations of causing injuries and outraging the modesty of the prosecutrix. However, he candidly acknowledges that at the time of submission of supplementary challan the offence under Section 10 of POCSO Act and sections 148, 149 IPC were deleted.

I have heard learned counsel for the parties at length and have gone through the record carefully.

The petitioner is behind bars since 7.7.2021. It is a case of version and cross-version. The prosecutrix and her sister have been duly examined before the Trial Court and they have not supported the case of the prosecution. There are two different FIRs at the behest of both the parties. As the present case is of version and cross-version it is a matter of trial to establish who was the aggressor. This Court would refrain itself from commenting anything on the merits of the case. However, in the overall

facts and circumstances of the case, this Court finds that counsel for petitioner succeeds in making out a case for grant of bail to the petitioner.

In the totality of facts and circumstances and without making any observation on merits, present petition is allowed. Petitioner be enlarged on bail on his furnishing bail/surety bonds subject to satisfaction of Trial Court/Duty Magistrate, concerned. Nothing stated herein shall be treated as an expression on the merits of the case.

(RAJESH BHARDWAJ)
JUDGE

30.03.2022

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Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No