

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

CRM-M-52967-2021

Date of decision : 30.11.2022

Baljit Singh @ Baljit Singh Chaudhary

.....Petitioner

versus

State of UT Chandigarh

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. J.J.S. Uppal, Advocate
for the petitioner.

Mr. J.S. Toor, APP, UT Chandigarh.

RAJESH BHARDWAJ, J. (Oral)

Petitioner has approached this Court praying for grant of regular bail in case FIR No.0208 dated 10.11.2018, under Sections 323/376 of IPC and Sections 25/54/59 of Arms Act, 1959, registered at Police Station Sector-49, District Chandigarh.

As per the facts of the case, the present FIR was lodged by the prosecutrix (name concealed) wherein it was alleged that in the intervening night of 9/10.11.2018 at about 10:30 PM, Baljinder Gill called her on her mobile. She sent the location of her house and within 10 minutes, Baljinder Gill came near her house along with the petitioner Baljit Singh @ Baljit Singh Chaudhary then three of them had liquor and they started smoking Hukka in their room. Thereafter, the boy whose name she did not know (petitioner) started fighting and she saw a gun in his hand, thereafter, that boy (Baljinder Singh) forcibly raped her. The request was made to register the case and take legal action against the accused. On registration of the FIR, the investigation commenced and the

investigating agencies completed the legal requirements for the investigation. Petitioner was arrested on 07.12.2020. He approached the Court of learned Judge, Fast Track Special Court, Chandigarh, however, after hearing counsel for both the sides, learned Fast Track Special Court, declined the same vide its order dated 22.09.2021. Aggrieved by the same petitioner is before this Court praying for grant of regular bail.

It has been contended by counsel for the petitioner that the prosecutrix and the petitioner both are of the age of majority. He submits that the allegations made in the FIR are false and frivolous on the face of it. He submits that the prosecutrix who is of the age of majority cannot be said to have been coerced by the petitioner as both of them had consensually stayed together. He submits that co-accused Bhavjeet Singh Gill @ Baljinder Gill has already been granted bail by this Court vide order dated 23.10.2019. He has submitted that after investigation, challan was filed, charges were framed and the learned trial Court proceeded with recording of the evidence of the witnesses. He has submitted that the prosecutrix was examined by the trial Court as PW-4 and she did not support the case of the prosecution. Hence, on the request of learned SPP, she was declared hostile. He submits that the material witnesses have already been examined by the prosecution including the prosecutrix who has not supported the case of the prosecution. He further submits that as the majority of the material witnesses have already been examined, the petitioner is not in a position to influence the prosecution witnesses. He submits that the petitioner has no criminal antecedents and thus, deserves to be granted bail.

Learned State counsel, on the other hand, has opposed the submissions made by counsel for the petitioner. He has submitted that even though the prosecutrix is of the age of majority, however, she specially deposed regarding the complicity of the petitioner. He candidly submits that the prosecutrix and the petitioner both are of the age of majority and now the prosecutrix has been examined but she has not supported the case of the prosecution and hence, she was declared hostile. He submits that out of 15 prosecution witnesses, 07 witnesses have already been examined including the prosecutrix.

Heard. Evidently, the prosecutrix and the petitioner both are of the age of majority. The prosecutrix has been examined as PW-4 and she did not support the case of the prosecution. Perusal of her deposition before the trial Court would reveal that she had consensual relation with Baljit Singh @ Baljit Singh Chaudhary i.e. the petitioner. She further deposed that on the date of occurrence, Baljit Singh was neither armed with any kind of weapon nor he developed any forcible relations with her. The material witnesses including the prosecutrix have already been examined. As submitted by learned State counsel, out of 15 prosecution witnesses, 07 witnesses have already been examined.

The veracity of the allegations would be assessed only after the conclusion of the trial and on the appreciation of evidence led by both the parties before the trial Court. The trial of the case will take sufficiently long time. This Court would refrain itself from commenting anything on the merits of the case. 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.

30.11.2022
m. sharma

(RAJESH BHARDWAJ)
JUDGE

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