

SANJAY TIWARI

...PETITIONER

VERSUS

STATE OF PUNJAB

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present: Mr. Chandan Singh Rana, Advocate for the petitioner.

Mr. M.S. Nagra, AAG, Punjab.

VIVEK PURI, J. (ORAL)

Custody certificate of the petitioner has been circulated today and the same is taken on record.

Sanjay Tiwari-petitioner is seeking regular bail in the case bearing FIR No.133 dated 22.08.2021 under Sections 363/366-A IPC(376-D IPC and Section 4 of POCSO Act added later on), registered at Police Station Sadar, Ludhiana.

Briefly, the FIR has been registered on the basis of the statement of the father of the victim who is aged about 15 years and 04 months. It has been alleged that during the intervening night of 15-16/08.2021, the victim has been kidnapped by Vikram, the co-accused on the pretext of marriage.

Learned counsel for the petitioner contends that the victim was recovered and Vikram, the co-accused was arrested on 16.10.2021. The petitioner is the father and Durga Nand, the co-accused is the maternal uncle of Vikram, co-accused. In the statement of the victim recorded during the course of

investigation by the police authorities, the victim has levelled allegations of commission of rape against the petitioner and Vikram, the co-accused. However, in the statement recorded under Section 164 Cr.P.C, the allegations are to the effect that the petitioner had made an attempt to commit rape and the allegation of rape has been levelled against Vikram, co-accused. Even, in her statement recorded during the course of trial, the victim has levelled allegations of attempt to commit rape against the petitioner. As per the report of chemical examiner, no semen was detected on the vaginal swabs. The prosecutrix and her father have been examined. Out of 20, only 03 witnesses have been examined so far. Durga Nand, co-accused has been granted bail by this Court in terms of order dated 26.08.2022 passed in CRM-M-6836-2022.

Learned State counsel has mainly opposed the bail application on the score that there are categoric allegations levelled against the petitioner for commission of rape in the first version of the case and even, there are allegations with regard to attempt to commit rape levelled in the statement under Section 164 Cr.P.C and during the course of trial and the same cannot be viewed lightly.

Although, initially, the victim had levelled allegations of commission of rape against the petitioner but subsequently, in her statement recorded under Section 164 Cr.P.C, she has attributed allegations of attempt to commit rape against him. Even, in her statement recorded during the course of trial, the allegations are only to the extent of attempt to commit rape. The allegations with regard to commission of rape have been attributed against Vikram, co-accused. The custody certificate indicates that the petitioner is in custody for a period of 01 year and 22 days and is not involved in any other case. So far only 03 out of 20 witnesses have been examined. There is a discrepant version given by the prosecutrix at the stage of investigation and trial

to take sometime. No fruitful purpose will be served by detaining the petitioner in further custody. As such, sufficient mitigating circumstances are made out to extend the concession of bail to the petitioner.

Without expressing any opinion on the merits of the case, the instant petition is allowed. The petitioner is ordered to be released on bail on his furnishing requisite bail bonds to the satisfaction of the learned trial Court/Duty Magistrate concerned.

The petition is allowed accordingly.

14.11.2022
renubala

(VIVEK PURI)
JUDGE

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

SANJAY TIWARI

...PETITIONER

VERSUS

STATE OF PUNJAB

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present: Mr. Chandan Singh Rana, Advocate for the petitioner.

Mr. M.S. Nagra, AAG, Punjab.

VIVEK PURI,J. (ORAL)

Custody certificate of the petitioner has been circulated today and the same is taken on record.

Sanjay Tiwari-petitioner is seeking regular bail in the case bearing FIR No.133 dated 22.08.2021 under Sections 363/366-A IPC(376-D IPC and Section 4 of POCSO Act added later on), registered at Police Station Sadar, Ludhiana.

Briefly, the FIR has been registered on the basis of the statement of the father of the victim who is aged about 15 years and 04 months. It has been alleged that during the intervening night of 15-16/08.2021, the victim has been kidnapped by Vikram, the co-accused on the pretext of marriage.

Learned counsel for the petitioner contends that the victim was recovered and Vikram, the co-accused was arrested on 16.10.2021. The petitioner is the father and Durga Nand, the co-accused is the maternal uncle of Vikram, co-accused. In the statement of the victim recorded during the course of

investigation by the police authorities, the victim has levelled allegations of commission of rape against the petitioner and Vikram, the co-accused. However, in the statement recorded under Section 164 Cr.P.C, the allegations are to the effect that the petitioner had made an attempt to commit rape and the allegation of rape has been levelled against Vikram, co-accused. Even, in her statement recorded during the course of trial, the victim has levelled allegations of attempt to commit rape against the petitioner. As per the report of chemical examiner, no semen was detected on the vaginal swabs. The prosecutrix and her father have been examined. Out of 20, only 03 witnesses have been examined so far. Durga Nand, co-accused has been granted bail by this Court in terms of order dated 26.08.2022 passed in CRM-M-6836-2022.

Learned State counsel has mainly opposed the bail application on the score that there are categoric allegations levelled against the petitioner for commission of rape in the first version of the case and even, there are allegations with regard to attempt to commit rape levelled in the statement under Section 164 Cr.P.C and during the course of trial and the same cannot be viewed lightly.

Although, initially, the victim had levelled allegations of commission of rape against the petitioner but subsequently, in her statement recorded under Section 164 Cr.P.C, she has attributed allegations of attempt to commit rape against him. Even, in her statement recorded during the course of trial, the allegations are only to the extent of attempt to commit rape. The allegations with regard to commission of rape have been attributed against Vikram, co-accused. The custody certificate indicates that the petitioner is in custody for a period of 01 year and 22 days and is not involved in any other case. So far only 03 out of 20 witnesses have been examined. There is a discrepant version given by the prosecutrix at the stage of investigation and trial

to take sometime. No fruitful purpose will be served by detaining the petitioner in further custody. As such, sufficient mitigating circumstances are made out to extend the concession of bail to the petitioner.

Without expressing any opinion on the merits of the case, the instant petition is allowed. The petitioner is ordered to be released on bail on his furnishing requisite bail bonds to the satisfaction of the learned trial Court/Duty Magistrate concerned.

The petition is allowed accordingly.

14.11.2022
renubala

(VIVEK PURI)
JUDGE

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