

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(220)

CRM-M-55349-2022
Date of Decision: 05.12.2022

Surender @ Golu

--Petitioner

Versus

State of Haryana

--Respondent

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

Present:- Mr. Nazuk Singhal. Advocate with
Mr. Yaseen Sethi, Advocate for the petitioner.

Mr. B.S. Virk, DAG, Haryana.

RAJESH BHARDWAJ.J (Oral)

The present petition has been filed under Section 439 Cr.P.C seeking the benefit of regular bail to the petitioner in case FIR No.0221 dated 5.8.2021 under sections 363, 366A, 376D, 34 IPC and section 6 of POCSO Act, registered at Police Station, Kalayat, District Kaithal.

As per factual matrix, a complaint was lodged by the mother of the prosecutrix, wherein it was alleged that her daughter i.e. the victim was studying in 10+2. She left home on 3.8.2021 at 8:30 AM for going to school but she did not return. They tried their level best to search her but failed to trace her. It was suspected that Surender son of Ram Phal had allured her on the pretext of performing marriage. It was further alleged that she came to know about this fact from Sandeep son of Bhim Singh i.e. the co-accused. It was alleged that her daughter is 17 years 2 months of age. A request was made to take legal action against the culprit.

The FIR in question was lodged and investigation commenced.

During investigation the victim was recovered on 13.8.2021 i.e. after 10

days of the occurrence. Thereafter, she was medically examined and her statement under section 164 Cr.P.C was recorded by the Magistrate concerned on 13.8.2021. Thereafter, the investigating agency recorded her second statement under section 164 Cr.P.C on 18.8.2021. The petitioner was arrested on 13.8.2021. He approached the learned Addl. Sessions Judge, Special Court, Kaithal for grant of bail, however, after hearing the parties, the same was declined vide order dated 27.5.2022. Aggrieved by the same petitioner has approached this court for grant of bail.

Learned counsel for the petitioner vehemently contends that the petitioner has been falsely implicated in the present case. He submits that petitioner has been implicated in the present case only for the reason that the victim was less than 18 years of age. He submits that from the facts and circumstances of the case, it is evident that the victim left her home on 3.8.2021 and thereafter she was recovered on 13.8.2021. He submits that her first statement under section 164 Cr.P.C was recorded on 13.8.2021, wherein she deposed that she left her home on 3.8.2021 without informing anyone at home and went to Baddi as her parents used to beat her. She further deposed that she wanted to live in the house of her Bua. Thereafter, the investigating agency in a deliberated manner recorded her second statement under section 164 Cr.P.C on 18.8.2021, wherein the petitioner was alleged to have committed rape with the victim. Counsel submits that the victim was compelled to depose against the petitioner as she never made any allegation against him in her first statement recorded under section 164 Cr.P.C. To buttress his arguments, counsel submits that victim has been examined by the learned Trial Court as PW-1 and she has deposed in her

statement that accused Surender @ Golu raped her after kidnapping her, however, co-accused Sandeep tried to commit rape with her. It is submitted that from the perusal of her statement it is apparent that she is changing her statements at every stage. Counsel submits that petitioner has no criminal antecedents and he is not in a position to influence the material witnesses as they already stand examined by the learned Trial Court.

On the other hand, learned State counsel submits that there are specific allegations against the petitioner. He submits that prosecutrix in the present case is less than 18 years of age and even if she was a consenting party, the same has no legal sanctity in the eyes of law. He submits that in her second statement recorded under section 164 Cr.P.C the victim alleged that both Surender and Sandeep committed rape upon her on 3.8.2021. He further submits that the victim has been examined by the Trial Court as PW-1 and she has duly supported the case of the prosecution. It is also submitted that victim was medically examined and as per the report of FSL human semen was detected. It is submitted that out of total 22 prosecution witnesses, 10 already stand examined including the complainant and prosecutrix, who have duly supported the case of prosecution. He further submits that as per information provided to him petitioner is not involved in any other case.

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

Admittedly, petitioner is behind bars since 13.8.2021. The victim, who was 17 years 2 months of age went missing from her home since 3.8.2021. Thereafter, she was recovered on 13.8.2021. In her first

statement recorded under section 164 Cr.P.C she made no allegations regarding rape against the petitioner, however, after 5 days her second statement under section 164 Cr.P.C was recorded, wherein she alleged that co-accused Sandeep committed rape upon her during the period from 3.8.2021 to 13.8.2021. The petitioner and victim travelled from one place to another place in public transports and lived in public places but there is nothing to show that the victim ever raised her voice showing her unwillingness to accompany the petitioner. As submitted by learned State counsel out of the total 22 prosecution witnesses, 10 already stand examined including the prosecutrix and complainant. Therefore petitioner is not in a position to influence the material witnesses. There is nothing on record to show that petitioner has any criminal antecedents. The veracity of the allegations levelled against the petitioner would be assessed by the Trial Court only upon conclusion of the trial. This court would refrain itself from commenting on the merits of the case, as the allegations and counter allegations would be assessed only after evaluation of the complete evidence to be led by both the sides before the Trial Court. The trial would take sufficiently long time in its conclusion.

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 the 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

05.12.2022

lucky

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