

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(206)

CRM-M-57927-2022
Date of Decision: 16.12.2022

Nikahil

--Petitioner

Versus

State of Haryana

--Respondent

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

Present:- Mr. Abhinav Sood, Advocate for the petitioner.

Mr. Kirpal Singh, AAG, 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.0766 dated 7.10.2021 under sections 363, 366-A, 376, 506 I.P.C and section 4 of POCSO Act and section 450 IPC (added later on), registered at Police Station, Camp Palwal, Tehsil & District Palwal.

As per factual matrix, a complaint was lodged by the mother of the victim, wherein it was alleged that on 6.10.2021 they were sleeping in their home, then, Nikahil son of Jahangir i.e. the present petitioner came to their home and enticed her daughter (victim) and took her to the roof of their house. Thereafter, he forcibly committed rape with her. Her daughter raised the noise to save her. On hearing the noise, she and her husband came to the spot and they saved their daughter. On seeing them the accused/petitioner got infuriated and threatened that in case they disclosed about the incident to anyone he would again rape their daughter and kill them. A request was made to take legal action against the culprit.

On the basis of the complaint, present FIR was lodged and investigation commenced. Statement of the victim under section 164 Cr.P.C was recorded and she was medically examined. Petitioner was arrested on 8.10.2021. He approached learned Special Court (Fast Track), POCSO, Palwal for grant of bail, however, after hearing the parties, the same was declined vide order dated 18.11.2022. Aggrieved by the same petitioner has approached this court for grant of bail.

Learned counsel for the petitioner vehemently contends that petitioner is a young boy of 20 years and he has been falsely implicated in the present case. He submits that victim was about 17 ½ years of age at the time of occurrence and she was in consensual relationship with the petitioner, however, their relationship was not acceptable to the family of the victim. He submits that the alleged occurrence took place in the house of the victim and in the presence of the family members which is totally unbelievable. It is submitted that both victim and petitioner are teenagers and were in love with each other. It is submitted that petitioner is behind bars for the last more than one year. It is submitted that as the material witnesses i.e. victim and her mother have already been examined by the Trial Court, hence, petitioner is not in a position to influence them. Counsel submits that petitioner has no criminal antecedents and thus in the overall facts and circumstances of the case, petitioner deserves to be enlarged on bail.

On the other hand, learned State counsel on instructions from ASI Dharam Pal has submitted that there are specific allegations against the petitioner. He submits that victim being minor at the time of occurrence,

her consent has no legal sanctity in the eyes of law. He submits that victim and her mother have been examined by the Trial Court and they have duly supported the case of prosecution. He further submits that as per the FSL report human semen was detected from the clothes of victim, however, DNA report is still awaited. It is submitted that out of the total 19 prosecution witnesses 10 have already been examined by the Trial Court. State counsel submits that as per information provided to him petitioner has no criminal antecedents.

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

Admittedly, petitioner was 20 years of age and victim was about 17 ½ years old at the time of occurrence. The alleged occurrence took place in the house of the victim and that too in the presence of her family members, which is highly improbable. As per learned State counsel out of the total 19 prosecution witnesses 10 including the victim and her mother already stand examined by the learned Trial Court. Hence, petitioner is not in a position to influence the material witnesses. There is nothing on record to show that petitioner has any criminal antecedents.

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 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 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

16.12.2022

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