

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

**CRM-M-58382-2022**

**Date of decision : 20.12.2022**

**Shabba**

**.....Petitioner**

**versus**

**State of Punjab**

**..... Respondent**

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

**\*\*\***

Present :- Mr. Vinay Kumar, Advocate  
for the petitioner.

Mr. Harpreet Singh, Addl. AG, Punjab.

**\*\*\***

**RAJESH BHARDWAJ, J. (Oral)**

This is the second petition filed for grant of regular bail to the petitioner in case FIR No.114 dated 03.08.2022, under Section 376 of IPC, registered at P.S. Shri Hargobindpur, District Batala.

As per the facts of the case, the complaint was lodged by the complainant/prosecutrix wherein, it was alleged that she was 35 years of age. On 03.08.2022 at about 12:30 PM, she was going towards Harchowal from her house by walk for domestic work. When she reached near village Mahesh then Saab son of Amrik Chand came on his motorcycle and offered her help. She took a lift from him and he took her to the sugarcane fields where he forcibly committed rape upon her. Request was made to register the case and take legal action against the petitioner. On the basis of the complaint, formal FIR was lodged and the investigation commenced. The investigating agencies wanted to get medical examination of the prosecutrix, however, she refused for the same. Her statement was recorded under Section 164 Cr.P.C. Petitioner was arrested on 04.08.2022. He approached the Court of learned

Additional Sessions Judge, Gurdaspur. However, after hearing counsel for the parties, learned Additional Sessions Judge declined the same vide order dated 21.11.2022. He approached this Court by way of filing petition bearing CRM-M-42364-2022 which was dismissed as withdrawn on 20.09.2022. Aggrieved by the same, now the petitioner has again approached this Court by way of filing the present petition.

Learned counsel for the petitioner has submitted that the prosecutrix has been examined by the trial Court on 10.11.2022 and she has not supported the case of the prosecution. He has vehemently contended that the prosecutrix is a married woman of 35 years of age and the petitioner is 33 years of age and thus, both are of the age of majority. He has submitted that the petitioner was falsely implicated by the prosecutrix in this case. He submits that the story put forward by the prosecution of forcibly rape with the prosecutrix is totally unbelievable. He has submitted that from the facts and circumstances of the case, at the most, the relationship of the petitioner and the prosecutrix could be consensual and thus, offence under Section 376 IPC would not be attracted in this case. He submits that after registration of the FIR, the prosecutrix was taken for her medical examination but she refused to give her consent and thus, her medical examination could not be conducted. He submits that obviously in the absence of the medical evidence, ocular version of the prosecutrix is not medically corroborated. To strengthen his arguments, he has further argued that now learned trial Court has examined the prosecutrix as PW-1 and she has not supported the case of the prosecution. He also submits that the petitioner has no criminal antecedents. He submits that once the prosecutrix herself has resiled from

her statement, prosecution has left with no evidence against the petitioner and thus, deserves to be granted bail.

Learned State counsel has submitted that the prosecutrix has made specific allegations of rape against the petitioner. He submits that the investigating agencies could have made an effort to get the prosecutrix medically examined, however, she did not give her consent. As per the instructions, the petitioner has no criminal antecedents. He further candidly acknowledges that as per instructions, the prosecutrix was examined but she did not support the case of the prosecution.

I have heard counsel for the parties and perused the record.

Evidently, the petitioner and the prosecutrix both are of the age of majority. The prosecutrix did not give her consent and thus, she could not be medically examined. She has been examined by the trial Court as PW-1. However, she specifically deposed before the trial Court that accused Shabba has not committed any offence with her. She also deposed that she did not suffer any statement before the police. Resultantly, on the request of learned Public Prosecutor, she was declared hostile by the Court. There is nothing on record to show that the petitioner has any criminal antecedents.

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 her 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.

20.12.2022  
*m. sharma*

( RAJESH BHARDWAJ )  
JUDGE

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