

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

CRM-M-5954-2023

Date of Decision: 24.05.2023

Sonu

..... Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Simranjeet Singh Sarwara, Advocate, for the petitioner.
Mr. Karunesh Kaushal, Assistant Advocate General, Punjab.

Rajesh Bhardwaj, J. (ORAL)

Prayer in the present petition is for the grant of regular bail to the petitioner in a case FIR No.98 dated 28.07.2014, registered under Sections 376, 120-B, 34 IPC and Section 4 of POCSO Act, 2012, at Police Station Urban Estate, Patiala.

As per facts of the case, statement of the victim (name concealed) was recorded by the Police, wherein, it was alleged that her date of birth is 24.01.1998. Sonu (petitioner) was her neighbour. She had intimacy with the mother of Sonu and she used to visit her family. Sonu was married with one Kavita Sami and out of their wedlock, they had a son of two years old. The victim and Sonu started liking each other. Sonu told her that he had divorced her wife and wanted to perform marriage with her. By enticing her with the promise to marry her, he started committed rape with her and his mother used to support him. On 15.07.2014 at about 8:00 A.M., Sonu met the victim outside the school and took her in his trolly on the pretext that he wanted to talk to her. However, after taking her, he forcibly raped her and threatened her to be eliminated in case she disclosed anything regarding the same. She found that Sonu was also married with another

woman, namely, Meenu and thus, found herself cheated. The prayer was made to take legal action against the accused. On the statement of the prosecutrix, the FIR was registered and the investigation commenced. She was medically examined. On the conclusion of the investigation, challan was presented against two accused i.e. the petitioner and his mother. However, the petitioner was declared proclaimed offender and thus, trial commenced only against co-accused i.e. his mother. The trial Court acquitted the co-accused i.e. the mother of the petitioner vide order dated 21.02.2018. The petitioner was subsequently arrested on 20.10.2020. He approached the Court of learned Additional Sessions Judge (Exclusive Court for Heinous Crimes Against Women), Patiala for grant of bail, however, the learned Court after hearing both the sides, dismissed the same vide its order dated 15.12.2020. Aggrieved by the same, the petitioner on the earlier occasion approached this Court by way of filing CRM-M-27623-2021, however, the same was allowed to be dismissed as withdrawn vide order dated 04.05.2022. Hence, the petitioner again approached this Court by way of filing the present second petition for grant of bail.

Learned counsel for the petitioner has vehemently contended that the petitioner has been falsely implicated in this case. He submits that as per case of the prosecution itself both the families i.e. of the petitioner and of the prosecutrix were known to each other as they were neighbours. He submits that the prosecutrix was medically examined and however, during the investigation the ocular version was not medically corroborated as no spermatozoa was detected. He submits that co-accused i.e. the mother of the petitioner has already been acquitted by the trial Court vide order dated 21.02.2018. He further submits that after the registration of the FIR,

the prosecutrix till date has not been produced by the police as she is said to be not traceable. He submits that the petitioner is behind bars from the last about 2 years 7 months. He submits that as per the instructions given by his client, the mother of the victim has been examined by the trial Court and she has not supported the case of the prosecution. He submits that the prosecutrix is not traceable till date and thus, the petitioner cannot be punished for her absence for unlimited time. He submits that the petitioner has no criminal antecedents and thus, in the overall facts and circumstances, he deserves to be granted bail.

On the other hand, learned State counsel has opposed the submissions made by learned counsel for the petitioner and has submitted that admittedly the prosecutrix in this case was minor at the time of occurrence. He submits that despite the best efforts made by the Investigating Agency, the prosecutrix is not traceable after the registration of the FIR. He submits that the FIR has been registered on the statement of the prosecutrix, where, she levelled specific allegations against the petitioner. He candidly acknowledges that the co-accused had been tried by the trial Court and she had been acquitted by it vide order dated 21.02.2018. He has submitted that as the petitioner was declared proclaimed offender, hence, he was subsequently arrested on 20.10.2020 and as on date out of 25 prosecution witnesses 9 witnesses have been examined. He submits that as per the instructions from ASI Kuldeep Singh, at present even the parents of the prosecutrix are not traceable for their examination before the trial Court.

Heard.

Evidently, the FIR was registered on the statement of the prosecutrix and the occurrence pertains to the year 2014. Though the

petitioner was declared proclaimed offender, however, subsequently he was arrested on 20.10.2020. The mother of the petitioner has already been acquitted by the learned trial Court. This Court directed the State to apprise the Court regarding the availability of the prosecutrix, however, the learned State counsel on instructions has submitted that the prosecutrix originally belonged to Bihar and despite the best efforts made by the Investigating Agency, she could not be found till date. Even the parents of the prosecutrix as on date as submitted before this Court are not traceable. There is nothing on record to show that the petitioner has any criminal antecedents. However, this Court cannot ignore the fact that the petitioner is behind bars from the last about three years and till date only 9 witnesses have been examined. This Court would refrain itself from commenting anything on the merits of the case, however, considering the prayer for grant of bail to the petitioner, I am of the view that learned counsel for the petitioner has been able to make out a case for grant of regular bail to the petitioner. The trial would take sufficiently long time for its conclusion.

Accordingly, the present petition is allowed and the petitioner is ordered to be released on bail 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.

24.05.2023
sharmila

Whether Speaking/Reasoned
Whether Reportable

(RAJESH BHARDWAJ)
JUDGE

: Yes/No
: Yes/No