

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

CRM-M-7668-2023

Date of Decision: 08.05.2023

Wasim

..... Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Rajesh Lamba, Advocate, for the petitioner.

Mr. B.S. Virk, Deputy Advocate General, Haryana.

Rajesh Bhardwaj, J. (ORAL)

Prayer in the present petition is for the grant of regular bail to the petitioner in a case FIR No.151 dated 18.07.2021, registered under Sections 354-A, 451 IPC and Section 4 POCSO Act, 2012, at Police Station Women NIT Faridabad, District Faridabad.

Adumbrated facts of the case are that the victim (name concealed) filed a complaint, wherein, it was alleged that she is wife of Jamshed and on 14.07.2021 in the midnight, Wasim (petitioner) entered her house and forcibly caught hold of her. On hearing her noise, her brother-in-law Munfed reached there and he tried to catch hold him, however, Wasim succeeded in running away from there. Request was made to take legal action against the accused. Thereafter, on 15.07.2021, the complainant made a complaint to the SHO, Women Police Station, NIT, Faridabad alleging the same allegations. Thereafter her statement was recorded on 18.07.2021, wherein she alleged that Wasim forcibly entered her house and eve teased her and committed wrong act with her. On the basis of the same, a formal FIR was registered and the investigation commenced. The prosecutrix was medically examined. The petitioner was arrested on

20.09.2021. He approached the learned Additional Sessions Judge, Faridabad for grant of bail, however, the learned Court after hearing both the sides, dismissed the same vide its order dated 12.11.2021. Aggrieved by the same, the petitioner on the earlier occasion approached this Court by way of filing CRM-M-49494-2021, however, the same was allowed to be dismissed as withdrawn with liberty to file fresh one with better particulars. Thereafter, the petitioner filed CRM-M-21048-2022 after three months, however, the same was dismissed at that stage. The petitioner thereafter approached Hon'ble Supreme Court by way of filing Special Leave to Appeal (Crl.) No.6676/2022, which was disposed of vide order dated 04.08.2022 by granting liberty to the petitioner to renew his prayer for bail after a reasonable time. Thereafter, the petitioner approached the learned Additional Sessions Judge, Fast Track Court, Faridabad praying for grant of bail, however, the same was declined by the learned Court vide its order dated 30.01.2023. Aggrieved by the same, the petitioner has again approached this Court by way of filing the present third petition.

It has been vehemently contended by learned counsel for the petitioner that the petitioner has been falsely implicated in this case. He has submitted that it is evident from the allegations made by the prosecutrix that there was no allegations pertaining to sexual assault in her first statement recorded on 15.07.2021 and she only made a statement that the petitioner tried to eve tease her and to commit wrong act with her. He further submits that intentionally the prosecutrix kept on delaying for making her statement and thereafter with due deliberations she made statement on 18.07.2021 by improving her statement and thus, the FIR was lodged. He submits that the alleged occurrence had taken place on 14.07.2021, whereas, the FIR was

registered on the statement of the prosecutrix on 18.07.2021 showing that the FIR was lodged on the basis of coloured version. He has further submitted that the prosecutrix has now been examined by the learned trial Court as PW-1, wherein for the first time she deposed before the trial Court that on the date of occurrence i.e. on 14.07.2021, petitioner-Wasim alongwith three boys entered their house and took her out of the house and these boys caught hold her, whereas, the petitioner committed penetrative assault upon her. He submits that the age of the prosecutrix is also debatable as in the *Nikahnama* and other documents, her age is more than 18 years on the date of the alleged occurrence. He submits that even otherwise the prosecutrix has already been examined and the petitioner is behind bars since the date of his arrest i.e. on 20.09.2021. He submits that the petitioner has no criminal antecedents and thus, 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 the prosecutrix was less than 18 years at the time of occurrence. He further submits that even in her statement recorded under Section 164 Cr.P.C., the prosecutrix levelled specific allegations regarding sexual assault committed by the petitioner with the help of three other boys, who entered their house. He submits that during the investigation the allegations against three other boys were not substantiated and thus, they were declared innocent. He submits that out of total 30 prosecution witnesses, only 1 witness i.e. the prosecutrix has been examined so far. He submits that as per the instructions received, the petitioner is not involved in any other case.

Heard.

Evidently, the petitioner is behind bars since 20.09.2021. The

alleged occurrence had taken place on 14.07.2021, whereas, the FIR was registered on 18.07.2021. The prosecutrix already stands examined and thus, probability of the petitioner tampering with the evidence of the prosecutrix does not survive any more. There is nothing on record to show that the petitioner has any criminal antecedents. Veracity of the allegations would be evaluated by the trial Court only after appreciation of complete evidence to be led by both the parties before it. 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.

08.05.2023			(RAJESH BHARDWAJ)
sharmila			JUDGE
	Whether Speaking/Reasoned	:	Yes/No
	Whether Reportable	:	Yes/No