

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

CRM-M-8253-2022

Date of decision : 23.01.2023

Kashmir Singh @ Sheera

.....Petitioner

versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Sandeep Arora, Advocate
for the petitioner.

Mr. Shubham Kaushik, AAG, Punjab.

RAJESH BHARDWAJ, J. (Oral)

Prayer in the present petition is for grant of regular bail to the petitioner in case FIR No.84 dated 12.08.2016, under Sections 363, 366, 120-B, 354-B, 323, 506, 341 of IPC and Section 25 of Arms Act, registered at Police Station Lambra, District Jalandhar Rural.

As per the facts of the case, the complaint was lodged by the complainant wherein it was alleged that her friend Ravi sent a girl namely 'A' (name concealed) to her house. On 11.08.2016, she along with Sheera and her friend prosecutrix/victim went to Baba Murad Shah Nakodar for paying obeisance. On their return, they were waylaid by some persons and out of which, three persons alighted from motorcycle and stopped them. They started beating her and the victim/prosecutrix. Thereafter those four persons took the victim with them and Sheera went with them on his motorcycle. It was alleged that four persons had kidnapped the victim and request was made to take legal action against them. On the basis of the complaint, formal FIR was lodged and the investigation commenced. During investigation, the victim came to police station on

18.08.2016 and her statement was recorded under Section 164 Cr.P.C. by learned JMJC, Jalandhar. On the basis of her statement, complainant of the FIR was also found to have been involved in the offence and she was also nominated as an accused. The victim/prosecutrix made no allegations pertaining to sexual assault and thus, offence under Section 376 IPC was not added. He was declared proclaimed person on 07.03.2020 and thereafter, he was arrested on 19th August, 2020 and since then, he is behind bars. He approached the Court of learned Additional Sessions Judge, Jalandhar praying for grant of regular bail. However, after hearing counsel for both the sides, learned Additional Sessions Judge, declined the same vide order dated 28.09.2020. Aggrieved by the same petitioner is before this Court praying for grant of regular bail.

It has been contended by counsel for the petitioner that the prosecutrix in this case is of the age of majority. He submits that the complainant of the FIR herself was found to be involved during investigation and thus, she was also nominated as an accused in this case. He submits that the prosecutrix was recovered after her alleged kidnapping and her statement under Section 164 Cr.P.C was recorded. The prosecutrix made no allegations pertaining to any sexual assault in the statement recorded under Section 164 Cr.P.C. He submits that learned trial Court has provided about 14-15 opportunities to the victim for recording her evidence. However, despite that till date the prosecutrix never appeared before the trial Court for recording her statement and she was declared proclaimed person on 18.12.2020. He submits that the false implication of the petitioner is writ large and the conduct of the prosecutrix in not appearing before the Court for recording her statement

is only with the motive to prolong incarceration of the petitioner. He submits that the petitioner has no criminal antecedents as he has never been involved in any other case. He submits that in the facts and circumstances of the case, petitioner deserves to be granted bail.

Learned State counsel, on the other hand, has submitted that there are specific allegations against the petitioner for his complicity in the alleged offence. He has submitted that though during medical examination of the victim, semen was detected, however, as the prosecutrix is of the age of majority and made no allegations regarding sexual assault in her statement under Section 164 Cr.P.C, offence pertaining to sexual assault were not incorporated. He fairly submits that due to non-appearance of the prosecutrix before the trial Court despite repeated opportunities, she has been declared proclaimed person. He submits that out of 12 prosecution witnesses, till date only 02 witnesses have been examined. He further submits that as per the instructions provided, petitioner is not involved in any other case except the present case.

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

Evidently, the complainant who lodged the FIR was subsequently herself was found to be involved in the case. The victim was recovered after 4-5 days of her alleged kidnapping and her statement was recorded under Section 164 Cr.P.C. on 18th August, 2016. Prosecutrix has been given repeated opportunities by the trial Court for recording her statement, however, till date she has not appeared before it and thus, was declared proclaimed person. Out of 14 prosecution witnesses, only 02 witnesses have been examined.

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 as only two witnesses have been examined. 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 his 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.

23.01.2023
m. sharma

(RAJESH BHARDWAJ)
JUDGE

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