

**211 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****CRM-M-9679-2023****Date of decision : 03.07.2023****Prakash Kumar****.....Petitioner****versus****State of Haryana****..... Respondent****CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ***********Present :- Mr. Punit Malik, Advocate
for the petitioner.****Mr. Manish Dadwal, AAG, Haryana.***********RAJESH BHARDWAJ, J. (Oral)**

This is the second petition filed by the petitioner praying for grant of regular bail in case FIR No.60 dated 03.03.2021 under Sections 342, 506 of IPC and Section 6 of POCSO Act, 2012, registered at Police Station Manesar, Gurugram.

Reply by way of affidavit of Mr. Surender Sheoran, HPS, Assistant Commissioner of Police, Manesar, Gurugram filed by learned State counsel is taken on record.

Adumbrated facts of the case are that statement of the mother of the victim was recorded by the police wherein it was alleged that her daughter i.e. the victim was 14 years of age. About 2-3 days back, she took her daughter to ESIC Hospital wherein it was found in her ultrasound that her daughter had pregnancy of ten weeks. On her asking, she told that she went to house of her neighbour where brother-in-law of Sonia namely, Prakash and her daughter were present. She further told that Prakash locked the door of the room and he committed rape with her. It was alleged that Prakash had forcibly raped her daughter due to which, her minor

daughter became pregnant and hence, the legal action be taken against the culprit. On the basis of the complaint, formal FIR was lodged and the investigation commenced. During investigation, accused-petitioner was arrested on 8th March, 2021. The victim was medically examined. The swabs were taken for DNA sampling and on completion of the investigation, the challan was presented. Petitioner approached the learned Fast Track Special Court, Gurugram praying for grant of bail. However, after hearing counsel for the parties, the same was declined by learned Fast Track Special Court, Gurugram. Against the same, petitioner on the earlier occasion approached this Court by way of filing CRM-M-31556-2022, however, the same was dismissed as withdrawn vide order dated 07.12.2022. Petitioner again approached learned Fast Track Special Court praying for grant of bail, however, the same was declined vide order dated 06.01.2023. Hence, petitioner is before this Court by way of present second petition.

It has been vehemently contended by counsel for the petitioner that the petitioner has been falsely implicated in this case. He submits that victim was medically examined by the investigating agencies, however, on receipt of the DNA report, the ocular version of the prosecution was not medically corroborated. To strengthen his arguments, he has submitted that the victim and the complainant i.e. mother of the victim have already been examined by the trial Court. However, both have not supported the case of the prosecution and thus, they have been declared hostile. He further submits that petitioner is behind bars since the date of his arrest i.e. 08.03.2021 and thus, he has completed more than two years of custody. He further submits that petitioner has no criminal antecedents and majority of the material witnesses already stand examined and thus, in the facts and circumstances of

the case, petitioner deserves to be granted bail.

Learned State counsel on the other hand has opposed the submissions made by learned counsel for the petitioner. He submits that the prosecutrix in this case is admittedly minor being less than 18 years of age. He submits that even if the prosecutrix has been declared hostile as per the law settled, the entire deposition of the prosecutrix cannot be ignored. The relevant portion of her deposition can be relied upon. He has submitted that out of 25 prosecution witnesses, 12 witnesses including the victim and the complainant have already been examined who have not supported the case of the prosecution. He further submits that though the petitioner is not involved in any other case, however, he has committed a heinous offence and thus, he does not deserve the concession of bail.

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

Evidently, the victim in this case is a minor. Petitioner is behind bars since 08.03.2021. Prosecutrix and her mother have been examined by the trial Court and admittedly, both have not supported the case of the prosecution. Out of 25 prosecution witnesses, 12 witnesses including the material witnesses i.e. victim and the complainant have already been examined who have not supported the case of the prosecution. There is nothing on record to show that the petitioner has any criminal antecedents. Trial is going to take sufficient long time.

The veracity of the allegations would be assessed only after the conclusion of the trial and on the appreciation of evidence to be 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. Keeping in view the arguments raised

by both the sides and perusing the record, this Court is of the opinion that

learned 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.

03.07.2023
m. sharma

(RAJESH BHARDWAJ)
JUDGE

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