

220 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-12793-2023

Date of Decision: 03.08.2023

Rohit

...Petitioner

vs.

State of Haryana

...Respondent

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present : Mr. Hardeep Rana, Advocate and
Mr. Aryavart, Advocate
for the petitioner.

Ms. Sheenu Sura, DAG, Haryana.

N.S.Shekhawat J. (Oral)

1. The petitioner has filed the instant petition under Section 439 of the Cr.P.C. with a prayer to grant a regular bail in case FIR No.11 dated 12.01.2021 registered under Sections 377, 365, 323 of IPC and Section 7 of POCSO Act, at Police Station Old Faridabad.

2. As per the case of the prosecution, the FIR in the present case was got registered by mother of the victim by alleging that her son 'victim' was aged about 12 years, who had gone to take momos at about 8.30 p.m. on 11.01.2021, but he did not return home. After some time, she received the information that her son was present near Agarsain Bhawan, Sector-19, Faridabad and she went there with her relative Vipin and her elder son Akash. When she reached there, she was informed by the 'victim' that a boy, namely, Rohit, resident of Sector-16, Faridabad had taken away the 'victim' on his motorbike and had committed unnatural sex upon him and had also beaten him up.

3. Learned counsel for the petitioner contends that the petitioner has been falsely implicated in the present case by the complainant. As per learned counsel, only two injuries were found on the person of the victim i.e. on the right cheeks and occipital region of the head and the medical evidence clearly suggested that there were no traces of penetration on the body of the victim. Learned counsel further contends that as per averments made in the FIR, one 'Pandit' has been shown to be the main witness, who had allegedly rescued the victim from the clutches of the petitioner. However, no such statement of any 'Pandit' was recorded under Section 161 Cr.P.C., which further falsifies the version of the prosecution. Still further, the petitioner was arrested in the present case on 11.01.2021 and has suffered incarceration for the last more than 02 years and 06 months. Even all material witnesses have been examined by the prosecution and there are no chances of tampering with the prosecution evidence.

4. On the other hand, learned State counsel has vehemently opposed the prayer made by learned counsel for the petitioner on the ground that the petitioner is the main accused and is not entitled for bail. She further contends that 07 witnesses, out of total 17 witnesses, have been examined so far and the next date of hearing is fixed on 28.08.2023 before the learned trial Court. She further admits that there is no other case against the present petitioner. She further contends that the scientific evidence proves the involvement of the petitioner in the alleged crime.

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

6. It is not in dispute that in the present case, all the material witnesses have already been examined and the petitioner is in custody for the last more than 02 years and 06 months. It is also not in dispute that the petitioner is a first offender and was not involved in any other criminal activity.

7. Without commenting on the merits of the case, the present petition is allowed and the petitioner is ordered to be released on bail subject to his furnishing bail bonds/surety bonds to the satisfaction of the trial Court/Duty Magistrate/Chief Judicial Magistrate, concerned.

03.08.2023
hemlata

(N.S.SHEKHAWAT)
JUDGE

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