

CRM-M-15409-2023

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Neutral Citation No: 2023:PHHC:048354

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-15409-2023

Date of Decision: April 10, 2023

Kulwinder Singh @ Kinda

.....Petitioner

Versus

State of Punjab

.....Respondents

CORAM: HON'BLE MR.JUSTICE RAJESH BHARDWAJ

Present: Mr.B.S.Aulakh, Advocate
for the petitioner.

Mr.Karunesh Kaushal, AAG, Punjab.

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RAJESH BHARDWAJ, J.(ORAL)

Instant petition is the third petition filed under Section 439 Cr.P.C. praying for grant of regular bail to the petitioner in case FIR No.89, dated 29.05.2021, under Sections 376 and 506 IPC, registered at Police Station Kotbhai, District Sri Muktsar Sahib.

Succinctly the facts of the case are that prosecutrix (name concealed) lodged a complaint regarding sexual assault committed upon her by accused/petitioner Kulwinder Singh @ Kinda. It was alleged that her father expired 20 years ago and she used to live with her mother and sister in the combined family. Petitioner/Kulwinder Singh, who was an armed personnel, had come on leave and on 05.04.2021 when her mother and sister were away from home, Kulwinder Singh Fauji was present in the house and taking benefit of the situation, he committed rape upon her by administrating

some intoxicant. It was alleged that Kulwinder Singh raped her without her consent and when she tried to prevent him, he put his hand on her mouth and stopped her from raising voice and thus prevented her from making any noise. Due to shame, she could not disclose the same to her family members, however, on 23.05.2021, her ultra sound was got conducted by her family members and she was found to be pregnant. As due to social constraints, she was retrained from reporting the matter, thus she ultimately lodged the complaint at a later stage. Request was made to take legal action against the culprit.

On the basis of the complaint, a formal FIR was lodged and the petitioner was arrested on 30.05.2021. Prosecutrix was medically examined. Statements of witnesses were recorded and the investigation was completed. He approached the Court of learned Additional Sessions Judge, Sri Muktsar Sahib praying for grant of bail, however, after hearing both the sides, the same was declined vide order dated 01.03.2023. Aggrieved by the same, petitioner had approached this Court earlier twice, however, both the earlier petitions were dismissed vide orders dated 04.05.2022 and 22.11.2022 passed in CRM-M-44790-2021 and CRM-M-39477-2022 respectively. Hence, this is the third petition filed by petitioner praying for grant of bail.

It has been vehemently contended by counsel for the petitioner that petitioner and the prosecutrix both are of the age of majority. He submits that petitioner was falsely implicated in this case. He submits that though there are allegations regarding the rape committed by the petitioner, however, the same is not medically corroborated. He submits that prosecutrix and the petitioner both are major and hence even if at all there is

any relationship between both of them, the same could be consensual and thus offence under Section 376 IPC would not be attracted. To buttress his arguments, he has argued that the prosecutrix has been examined by the prosecution as PW1 and she has specifically deposed that she was in love with one Kuljinder Singh with whom she developed physical relationship and out of the relationship she conceived one child, however, later on Kuljinder Singh backed out from performing marriage with her. She further deposed that petitioner Kulwinder Singh neither harassed her nor committed any sexual intercourse with her. He submits that on the request of Additional Public prosecutor she was declared hostile. He submits that prosecutrix, who is of the age of majority, has not supported the prosecution case and has been declared hostile and hence false implication of the petitioner is writ large. He submits that petitioner is behind bars from the last about two years and the prosecutrix already stands examined and thus there are no chances of the petitioner of tampering with the evidence of the prosecutrix. He submits that petitioner has no criminal antecedents and thus, in the facts and circumstances he deserves to be granted bail.

Learned State counsel, on the other hand, has opposed the submissions made by counsel for the petitioner. He has submitted that FIR has been lodged on the basis of statement of prosecutrix who has specifically deposed that petitioner committed sexual intercourse with her without her consent. He has also submitted that as per ultrasound report, the prosecutrix was found pregnant and prosecutrix herself also conceded that rape was committed with her by the petitioner. However, he has fairly submitted before this Court that prosecutrix is of the age of majority and she has

already been examined but has not supported the case of the prosecution and thus has been declared hostile. He submits that out of 20 prosecution witnesses, 4 already stands examined. He also submits that as per instructions provided from ASI Malkit Singh, the petitioner is not involved in any other case.

Heard.

Evidently, as per case of the prosecution, both the petitioner and the prosecutrix are of the age of majority. Prosecutrix already stands examined and she has deposed before the trial Court that she was in love with one Kuljinder Singh who hails from U.P. and she conceived from her relationship with Kuljinder Singh, however, he refused to perform marriage with her. She has specifically deposed before the trial Court that petitioner Kulwinder Singh has committed no sexual act with her and thus she has been declared hostile. The prosecutrix already stands examined. It is evident that petitioner is behind bars from the last almost two years. There is nothing on record to show that petitioner is involved in any other case. Veracity of the allegations would be assessed by the trial Court only after appreciation of evidence to be led by both the parties. However, this Court would refrain itself from commenting anything on merits of the case, at this stage. In the overall facts and circumstances of the case, this Court finds that counsel for the petitioner succeeds in making out a case for grant of bail to the petitioner.

In the totality of facts and circumstances and without making any observation on merits, present petition is allowed. Petitioner be enlarged on bail on his furnishing bail/surety bonds subject to the

satisfaction of trial Court/Duty Magistrate concerned.

Nothing stated herein shall be treated as an expression of opinion on the merits of the case.

April 10, 2023
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(RAJESH BHARDWAJ)
JUDGE

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| 1. | Whether speaking/reasoned ? | Yes/No |
| 2. | Whether reportable ? | Yes/No |