

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M 21676/2023

Date of decision: 17.07.2023.

Jitender Sharma @ Joni

.....Petitioner.

Vs.

State of Haryana

.....Respondent

CORAM HON'BLE MS. JUSTICE NIDHI GUPTAPresent:- Mr. Anmol Rattan Sidhu, Senior Advocate assisted by
Mr. Pratham Sethi, Advocate for the petitioner.

Mr. Brijesh Sharma, AAG Haryana

Mr. SK Bokolia, Advocate for the complainant.

Nidhi Gupta, J.

This is first petition under Section 439 Cr.PC for grant of regular bail to accused-petitioner- Jitender Sharma @ Joni in case FIR No.51 dated 19.9.2021 (Annexure P-1) under Sections 376DA, 506 and 34 IPC and Sections 17, 6 of POCSO Act and 3(2)(v) of SC/ST Act, registered at PS Women, District Sirsa.

As per allegations contained in the FIR, the accused-petitioner was introduced to prosecutrix aged 14 years, a student of 9th class, by her aunt (Chachi) Rajni Bala @ Rajni in January 2021 while prosecutrix had accompanied her to the market. After a few days she was again taken by Rajni Bala to Heart Cafe near Bus Stand, Sirsa where accused-petitioner was already present. Her aunt left her there on the pretext of some work and then accused-petitioner took prosecutrix to the basement and committed forcible

rape upon her and also prepared a video. Thereafter, prosecutrix was threatened by Rajni Bala @ Rajni and accused-petitioner not to tell anyone about the occurrence or else her video will be made viral. After 2-3 days of the incident, she went to Sanjay Kiryana Store where one Sanjay Kakkar told her that he was aware of her obscene video and gave her a phone with the direction to talk to the petitioner. It is alleged that out of fear she started talking to him. It is further alleged that she was forced to make obscene video from the mobile phone of her father and to send it to the Whatsapp number of the petitioner. Thereafter, as the prosecutrix was mentally upset, she was sent to the house of her maternal Uncle Deepak Middha at Jalandhar. However, petitioner came to know about her whereabouts and he started giving threatening call to her uncle and ultimately the matter was reported to the police.

Ld. Senior counsel appearing on behalf of the petitioner contends that though in the FIR it has been alleged that the petitioner had committed rape on her and also made video, however, neither in the FIR, nor in the statement recorded under Section 164 Cr.PC., has the victim anywhere stated about specific date and time when the alleged incident took place. It is submitted that it is only in her deposition that the prosecutrix has mentioned the date of alleged incident as 27.1.2021.

Ld. Senior Counsel next contends that the FIR was registered after an inordinate and unexplained delay of about 8 months of the alleged incident on 19.9.2021. It is submitted that it is the prosecution's case that the victim told her parents about the said incident in March, 2021, whereafter, she was sent to the house of her maternal uncle (Mama) Deepak Middha, where she stayed till September 2021. It is submitted that it is only thereafter, that

the FIR was lodged on 19.9.2021, after a huge delay of eight months. It is submitted that the petitioner was arrested on 21.9.2021 and is in custody since then.

Ld. Senior counsel contends that there are glaring discrepancies in the prosecution case. Learned Senior counsel submits that in actual fact, the petitioner and the victim were very friendly. It is submitted that on the day of the alleged incident, which is 27th January, it was the birthday of the petitioner and he was having a party. Ld. Senior counsel refers to the cross-examination dated 27.2.2023 of the prosecutrix/PW1 (Annexure P-3), wherein she has admitted that she was dancing with the petitioner at the Café and that she and the petitioner *“are putting cake in the mouth of each other and Ex.D-5 is my photograph, which were clicked at Heart Café, Sirsa on 27.1.2021. It is correct that in the video we are putting cake in the mouth of each other.”* Ld. Senior counsel submits that clearly the prosecutrix has admitted her video clippings as well as photographs at Heart Café on 27.1.2021 celebrating the birthday of accused in the presence of other persons as well; however, in the FIR as well in her examination-in-chief, the victim has stated that on 27.1.2021 there was no other person present at the alleged place of incident except herself and the petitioner.

Ld. Senior counsel submits that in her cross-examination the victim has further admitted that she did not raise any noise nor made any complaint to any person on 27.1.2021 when she came out of the Café that accused had made her video and that it should be taken from him. It is contended that though in the FIR it has been alleged that victim was forced to make obscene video from the mobile phone of her father and to send it to the Whatsapp number of the petitioner, however, in her deposition victim has

admitted that *“there is no video of mine on judicial file which is stated to be made by accused Jitender Sharma on 27.1.2021. It is correct that there is no such video on the judicial file which has been stated by me to have been sent on the Whatsapp mobile number of Jitender Sharma from mobile of my father.”*

Ld. Senior counsel points out that victim has further admitted in her cross-examination that she used to talk with the petitioner secretly and always in the absence of her parents sometimes for few minutes and sometimes for hours. It is submitted that accordingly, there are several material discrepancies in the case put forth by the prosecution.

Ld. Senior counsel further states that material prosecution witnesses already stand examined including the victim as PW1 and her father as PW2 and therefore, if the petitioner is released on regular bail there is no danger of influencing or threatening the prosecution witnesses. It is further submitted that co-accused Rajni Bala and Sanjay Kumar have been granted bail by this Court vide order dated 24.3.2023 (Annexure P-5); and accordingly prays that the petitioner be released on regular bail.

Per contra, it is submitted by the Id. Counsel for the complainant that the victim was only 14 years of age at the time of incident. It is submitted that the correct and true sequence of events has been clearly set out in the FIR. It is submitted that the petitioner and his family are continuously threatening the complainant and his family and when the maternal uncle of complainant Deepak Middha went to depose he was restrained by the opposite party from giving his testimony. However, Id. Counsel is unable to explain the cross-examination of the victim.

Ld. State counsel has produced custody certificate dated 16.7.2023 of the petitioner which is taken on record. Ld. State counsel submits that prosecutrix was 14 years old at the time of offence; and as PW1, she has supported her version. Ld. State counsel refers to FIR to submit that the allegations are serious and specific in nature and therefore, the petitioner be not released on bail.

I have heard ld. Counsel for the parties and perused the record with their able assistance. I have given my thoughtful consideration to the rival submissions made by them.

In my considered opinion, keeping in view the totality of facts and circumstances of the case, and the fact that trial is likely to take long time to conclude, as also the fact that the petitioner has no criminal antecedents, and as on date has undergone total custody of 01 year 09 months and 25 days, the present petition is **allowed**. The petitioner is ordered to be released on regular bail upon his furnishing bail bonds/ surety bonds to the satisfaction of CJM/Duty Magistrate concerned.

However, nothing stated above shall be taken as an expression of opinion on the merits of the case.

17.07.2023.
Joshi

(Nidhi Gupta)
Judge

Whether speaking/reasoned
Whether reportable

Yes
Yes/No