

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

CRM-M-21202-2023

Date of Decision: 23.08.2023

Rakesh @ Rinku

..... Petitioner

Versus

State of Haryana and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Madan Pal, Advocate, for the petitioner.

Ms. Upasana Dhawan, Assistant Advocate General, Haryana.

Rajesh Bhardwaj, J. (ORAL)

Prayer in the present second petition is for the grant of regular bail to the petitioner in a case FIR No.90 dated 15.07.2019, registered under Section 323 IPC and Section 6 & 17 of POCSO Act, 2012, at Police Station Mahila Ballabhgarh, District Faridabad.

As per facts of the case, statement of the victim (name concealed) was recorded by the police. It was alleged that she was 16 years of age and has passed 8th standard. Aakash son of Pawan was known to her since the year 2019. When she was passing through the street, Aakash asked her to be his friend, but she refused. However, he kept on forcing her to talk with him. Thereafter, he introduced her to his cousin Rinku (petitioner). Rinku started calling her on phone. Though she refused to talk to him, but he started torturing her. On the night of 14.07.2019 at about 1:50 a.m., when she woke up she heard noise in the street. On opening the door, she found two boys standing there, who called her. On refusal, they forcibly dragged her to the fodder room and she was beaten, due to which she became unconscious. On regaining consciousness, she noticed that Aakash had caught hold her, whereas, Rinku committed rape with her. Both of them

caused injuries to her as well. Request was made to take legal action against the culprit. On the basis of the complaint, a formal FIR was lodged and the investigation commenced. Statement of the victim was recorded under Section 164 Cr.P.C. and she was medically examined. On completion of the investigation, challan was presented. Co-accused Aakash being a juvenile was tried separately. Though the petitioner was earlier declared proclaimed offender, but subsequently he was arrested on 29.05.2021. He approached the Court of learned Additional Sessions Judge, Fast Track Special Court, Faridabad, however, the learned Court after hearing both the sides, dismissed the same vide its order dated 01.04.2022. Aggrieved by the same, on the earlier occasion the petitioner approached this Court praying for interim regular bail by way of filing CRM-M-15309-2022, however, the same was allowed to be withdrawn vide order dated 21.07.2022. Again the petitioner approached the Court of learned Additional Sessions Judge, Fast Track Special Court, Faridabad for interim bail, but the same was again dismissed on 12.10.2022. Hence, the petitioner has approached this Court again by way of filing the present second petition for grant of bail.

Learned counsel for the petitioner has vehemently contended that the petitioner has been falsely implicated in this case. He submits that the allegations made by the prosecutrix are totally without any basis, but as she was less than 18 years of age, the petitioner is being falsely roped in the present case. He submits that during the trial, the prosecutrix has been examined as PW-1, her mother as PW-2 and her father has been examined as PW-3 and all these material witnesses did not support the case of the prosecution and thus, they were declared hostile. He further submits that the ocular version in this case is also not medically corroborated. He further

submits that as per his information, the prosecutrix is married to some other boy. As the material witnesses have not supported the case of the prosecution, false implication of the petitioner is writ large. He submits that even otherwise as the prosecutrix and other material witnesses have been examined, there is no probability of the petitioner of influencing the prosecution witnesses. He submits that the petitioner has no criminal antecedents. He submits that in the facts and circumstances of the case, the petitioner deserves to be enlarged on bail.

Per contra, learned State counsel has opposed the submissions made by learned counsel for the petitioner. She has submitted that admittedly, the prosecutrix was less than 18 years of age and thus, was a minor. She submits that though the prosecutrix has not supported the case of the prosecution and has been declared hostile, however, complete deposition of the prosecutrix cannot be discarded and the relevant portion of the same can always be relied upon by the trial Court. She submits that co-accused Aakash, who was tried by the Juvenile Court has already been convicted. On instructions from PSI Sweety, she submits that there is one FIR registered against the petitioner for the offence under Section 174-A IPC as he was declared proclaimed offender. She submits that out of total 29 prosecution witnesses, 5 prosecution witnesses including the prosecutrix and her parents have been examined.

Heard.

Evidently, the petitioner was arrested on 29.05.2021. Thereafter, on completion of the investigation, material witnesses i.e. the prosecutrix and her parents have been examined and they have not supported the case of the prosecution and they were declared hostile. Out of

total 29 prosecution witnesses, 5 witnesses have been examined. As all the material witnesses have already been examined, probability of influencing the prosecution witnesses by the petitioner no more survives. Veracity of the allegations would be evaluated by the trial Court only after appreciation of complete evidence to be led by both the parties before it. This Court would refrain itself from commenting anything on the merits of the case, however, considering the prayer for grant of bail to the petitioner, I am of the view that learned counsel for the petitioner has been able to make out a case for grant of regular bail to the petitioner. The trial would take sufficiently long time for its conclusion.

Accordingly, the present petition is allowed and the petitioner is ordered to be released on bail 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.

23.08.2023
sharmila

Whether Speaking/Reasoned
Whether Reportable

(RAJESH BHARDWAJ)
JUDGE

: Yes/No
: Yes/No