

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

CRM-M-24517-2023

Date of Decision: 04.10.2023

Gurinder Singh

..... Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Sukhjit Singh, Advocate, for the petitioner.

Ms. Akshita Chauhan, Deputy Advocate General, Punjab.

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.126 dated 09.08.2020, registered under Sections 376, 506 IPC and Section 6 of POCSO Act, at Police Station Sadar Kharar, District SAS Nagar.

Adumbrated facts of the case are that statement of mother of the victim was recorded, wherein, it was alleged that she has four children and her youngest daughter i.e. the victim was 15 years of age. Her daughter (victim) was working with Gurinder Singh (petitioner). Gurinder Singh after giving his ID proof rented a flat at Jalvayu Tower, Block-F, Flat No.101 and gave to the complainant family. They stayed there for two months and thereafter, returned from there. After returning, her daughter (victim) remained scared and frightened. On asking she told that on 28.07.2020, Gurinder Singh took her in his car to the Blue Diamond, Mohali on the pretext that her elder sister was waiting for her. On this pretext, he took her to a rented room at first floor where he forcibly raped her. Thereafter, she was threatened not to disclose the same to anyone. Request was made to take legal action against the accused. On the basis of the statement of the

mother of the victim, formal FIR was registered and investigation commenced. Statement of the victim under Section 164 Cr.P.C. was recorded and she was medically examined. On the completion of investigation, challan was presented and the charges were framed by the trial Court and the trial commenced. The petitioner was arrested on 10.08.2020. He approached the Special Court, SAS Nagar for bail and the same was declined vide order dated 27.11.2020. Thereafter, the petitioner approached this Court by way of filing CRM-M-13174-2021, however, the same was allowed to be dismissed as withdrawn vide order dated 04.04.2022. 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 and frivolously implicated in this case. He has submitted that the alleged occurrence had taken place on 28.07.2020, whereas, the FIR has been registered on 09.08.2020 i.e. after about a delay of 11 days. He has submitted that from the allegations made in the FIR, it is apparent that the petitioner and the victim's family were known to each other. He submits that sister of the victim has been examined as PW-3 before the trial Court, wherein, she has emphatically deposed that she was in a consensual physical relationship with the petitioner. She further deposed before the trial Court that the relationship with the petitioner went sour and hence, she was having a grudge against him. Learned counsel for the petitioner has submitted that it is apparent that the petitioner was known to the family of the victim and as relationship between the sister of the victim and the petitioner went bitter, the petitioner was clandestinely implicated in the false and frivolous FIR. He has submitted that the ocular

version of the prosecutrix is not even medically corroborated. He submits that the petitioner is behind bars since the date of his arrest i.e. 10.08.2020, hence, he has virtually completed more than three years behind bars. He has submitted that material witnesses i.e. complainant, victim and victim's sister already stand examined. He further emphasises that as the petitioner has no criminal antecedents, in the facts and circumstances of the case, he deserves to be granted bail.

On the other hand, learned State counsel has opposed the submissions made by learned counsel for the petitioner. She has submitted that admittedly the prosecutrix is minor being less than 18 years of age. She submits that even if the prosecutrix was consenting party, the same has no legal sanctity as the consent of a minor is not admissible. She submits that out of 21 prosecution witnesses, 5 witnesses including the victim and complainant, already stand examined. She has drawn the attention of this Court to the status report filed by way of an affidavit of Karan Singh Sandhu, PPS, Deputy Superintendent of Police, Sub Division Kharar-1, District SAS Nagar and submits that the petitioner has no criminal antecedents. She has further submitted that as per the status report, though the FIR was registered under Sections 376, 506 IPC and Section 6 of POCSO Act, however, charges were framed under Sections 363, 366, 376 (iii) IPC and Section 4 POCSO Act.

Heard.

Evidently, the occurrence in the case has taken place on 28.07.2020, whereas, the FIR was lodged about 11 days thereafter i.e. on 09.08.2020. All the material witnesses including the complainant, prosecutrix and her sister already stand examined by the trial Court and thus, the apprehension that the petitioner can influence the material

witnesses, does not survive any more. Out of total 21 prosecution witnesses 5 witnesses have been examined by the trial Court. This Court would refrain itself from commenting anything on 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 in 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.

04.10.2023
sharmila

Whether Speaking/Reasoned
Whether Reportable

(RAJESH BHARDWAJ)
JUDGE

: Yes/No
: Yes/No