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

CRM-M-26323-2023

Date of decision : 13.09.2023

Davinder Kumar @ Chottu @ Devendra YadavPetitioner

versus

State of Punjab Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Yaseen Sethi, Advocate and
Mr. Anmol Jindal, Advocate
for the petitioner.

Ms. Akshita Chauhan, DAG, Punjab.

RAJESH BHARDWAJ, J. (Oral)

This is the second petition filed by the petitioner praying for grant of regular bail in case FIR No.53 dated 19.03.2021, under Section 376 of IPC and Section 4 of Protection of Children from Sexual Offences Act, 2012 at Police Station Division No.8, Jalandhar District.

Adumbrated facts of the case are that the prosecutrix (name concealed) was 14 years of age was studying in 6th standard. On 17.03.2021, she along with her sisters had gone to the Courtyard of Sanjay to collect their articles at 11:30 AM. Finding her alone, Davinder Kumar @ Chottu (petitioner), came outside and took her to his quarter by holding her arm and thereafter, he switched on the pedestal fan in the room, put a cloth in her mouth and started committing rape upon her. In the meanwhile, her sister came there and rescued her. Her brother also came at the spot who hit Devinder Kumar with rod lying in the yard.

Prayer was made to take legal action against the culprit. On the statement

of prosecutrix, formal FIR was registered and investigation commenced. The prosecutrix was medically examined. Her statement under Section 164 Cr.P.C. was recorded. Petitioner was arrested on 23.03.2021. He approached the Court of learned Additional Sessions Judge-cum-Fast Track Special Court (POCSO), Jalandhar for grant of bail, however, after hearing counsel for the parties, learned Additional Sessions Judge-cum-Fast Track Special Court (POCSO), Jalandhar dismissed the same vide order dated 23.08.2021. Thereafter, the petitioner approached this Court by way of filing CRM-M-2680-2022, however the same was allowed to be dismissed as withdrawn vide order dated 17.03.2022. Hence, the petitioner is before this Court by way of filing the present petition.

Learned counsel for the petitioner has vehemently contended that the petitioner has been falsely implicated in this case. He submits that the petitioner and the family of the prosecutrix are neighbourer and on account of some petty dispute in the family, the conspiracy was hatched and the petitioner was implicated in this case. He submits that the allegations regarding the rape of the prosecutrix are totally false and frivolous as the prosecutrix was medically examined and the ocular version is not medically corroborated. He submits that the allegations made against the petitioner by the prosecutrix are totally tutored one. He submits that the petitioner is behind bars since the date of his arrest and till date, there is no substantial progress in the trial. He submits that all the material witnesses including the prosecutrix are already examined by the trial Court and thus, there cannot be any apprehension that in case the petitioner is granted bail, he can influence the prosecution witnesses. He submits that in the facts and circumstances of the case, petitioner deserves

to be granted bail.

Learned State counsel on the other hand has submitted that evidently, the prosecutrix is 14 years of age and thus, a minor. She submits that there are specific allegations against the petitioner made by the prosecutrix in her statement under Section 164 Cr.P.C. as well as in her deposition before the trial Court while appearing as prosecution witness. She further submits that in all there are 18 prosecution witnesses out of which 09 witnesses have already been examined including the prosecutrix and her family members who have duly supported the case of prosecution. She submits that as per the instructions, petitioner is not involved in any other case. She has submitted that keeping in view the gravity of the offence committed against the minor, petitioner does not deserve to be granted the concession of regular bail.

I have heard counsel for the parties and perused the record. Evidently, the occurrence in the present case is of 17.03.2021 whereas the FIR has been registered on 19.03.2021. Both the families are neighbours. Petitioner is behind bars since the date of his arrest i.e. 23.03.2021 and thus, he completes incarceration of more than 02 years. As submitted before this Court, out of 18 prosecution witnesses, 09 witnesses have been examined including the prosecutrix and other material witnesses. Thus, the apprehension regarding the petitioner influencing the prosecution witnesses do not survive. There is nothing on record to show that the petitioner has any other criminal case against him.

This Court would refrain itself from commenting anything on the merits of the case. The trial of the case will take sufficiently long time. However, keeping in view the custody period as well as the

attending facts and circumstances of the case, this Court is of the opinion that learned counsel for the petitioner succeeds in making out a case for grant of regular bail. Accordingly, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail/surety bonds 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.

13.09.2023
m. sharma

(RAJESH BHARDWAJ)
JUDGE

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