

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

2023:PHHC:052586

(218)

CRM-M-30974-2022

Date of Decision: 17.04.2023

Kapil @ Sushil

--Petitioner

Versus

State of Haryana

--Respondent

CORAM:- HON'BLE MR. JUSTICE RAJESH BHARDWAJ.

Present:- Mr. B.S. Mamli, Advocate for the petitioner.

Mr. Kirpal Singh, A.A.G., Haryana.

Mr. Aditya Sanghi, Advocate for the complainant.

RAJESH BHARDWAJ.J (Oral)

The present petition has been filed under Section 439 Cr.P.C seeking the benefit of regular bail to the petitioner in case FIR No.0547 dated 24.8.2020 under sections 363, 366-A, 452, 376-D, 342, 506 IPC and Section 6 of POCSO Act, registered at Police Station, Barwala, District Hisar.

As per factual matrix, the FIR in question was lodged on the statement of the victim (name concealed), wherein it was alleged that she was of the age of 16 years and 7 months and was studying in 10th class. On 22.8.2020 at about 11 PM in the night she came downstairs to give medicine to her grandfather and in the meanwhile Amit son of Balwan and Kapil son of Dalsher (present petitioner) came to her house and forcibly took her to Kapil's house where Amit committed rape with her without her consent while Kapil stood outside the house as a guard. In the morning her family members started searching her and on 23.8.2020 at about 9/10 AM in morning her maternal uncle Ashok came to the place of occurrence and on

seeing him the accused ran away from there. A request was made to take legal action against the culprits.

The FIR was registered and investigation commenced. Statement of the victim under Section 164 Cr.P.C was recorded and she was medically examined. Petitioner was arrested on 30.8.2020. He approached the learned Addl. Sessions Judge, Fast Track Special Court, Hisar for grant of bail, however, after hearing the parties, the same was declined vide order dated 19.8.2021. Aggrieved by the same petitioner approached this court for grant of bail for the first time by way of filing CRM-M-53522-2021, however, the same was dismissed as withdrawn by this court vide order dated 14.3.2022. Hence, this second petition has been filed praying for grant of bail to the petitioner.

Learned counsel for the petitioner vehemently contends that the petitioner has been falsely implicated in the present case. He submits that as per allegations made in the FIR petitioner had committed no sexual intercourse with the victim and he has been alleged to have been guarding the place of occurrence. It is submitted that the victim was allegedly taken away in the night on 22.8.2020, whereas she was recovered on the next day i.e. on 23.8.2020. Counsel submits that both the parties belong to the same village and from the facts and circumstances of the case it is evident that there was no resistance from the victim side. It is submitted that the relationship between the main accused Aman and victim was consensual. Counsel further submits that petitioner is behind bars from the last about 2 years. He submits that victim and her maternal uncle already stand examined by the learned Trial Court, however, the case has been adjourned four times in order to examine the parents of victim but they are

intentionally avoiding their presence only in order to prolong the custody of the petitioner. He submits that petitioner has no criminal antecedents and he deserves to be granted the benefit of bail.

Learned counsel for the complainant has vehemently opposed the submissions made by counsel for petitioner. He submits that the victim in this case was minor at the time of occurrence and even if she was a consenting party, her consent has no legal sanctity in the eyes of law. It is submitted that petitioner has been specifically named in the FIR and he was guarding the place of occurrence and the offence committed by him is at par with that of the main accused. It is further submitted that the earlier petition filed by the petitioner was dismissed as withdrawn by this court vide order dated 12.3.2022 and thereafter there is no change in the circumstances of the case.

On the other hand, learned State counsel on instructions from SI Amit Kumar submits that there are specific allegations against the petitioner. He submits that petitioner had participated in the commission of offence and his complicity is also evident from the facts and circumstances of the case. He submits that out of total 19 prosecution witnesses 2 including the victim already stand examined by the Trial Court. He further submits that as per information provided to him petitioner is not involved in any other case.

I have heard learned counsel for the parties at length and have gone through the records carefully.

Admittedly, petitioner is behind bars since 30.8.2020. As per allegations made in the FIR petitioner was allegedly guarding the place of occurrence. As the victim already stands examined by the Trial Court,

petitioner would not be in a position to influence her. There is nothing on the record to show that petitioner has any criminal antecedents. The veracity of the allegations levelled against the petitioner would be assessed by the Trial Court only upon conclusion of the trial. This court would refrain itself from commenting on the merits of the case, as the allegations and counter allegations would be assessed only after evaluation of the complete evidence to be led by both the sides before the Trial Court. The trial would take sufficiently long time in its conclusion.

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 on the merits of the case.

(RAJESH BHARDWAJ)
JUDGE

17.04.2023

lucky

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No