

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

CRM-M-25675-2023

Date of Decision: 23.11.2023

Vinod

..... Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Naresh Kumar Ganga Advocate, for the petitioner.

Ms. Upasana Dhawan, Assistant Advocate General, Haryana.

Rajesh Bhardwaj, J. (ORAL)

Prayer in the present third petition is for the grant of regular bail to the petitioner in a case FIR No.840 dated 18.10.2021, registered under Sections 363, 366-A IPC, at Police Station Barwala, District Hisar. (Later on Sections 376(3), 328, 506 IPC and Section 6 of POCSO Act, were added)

Adumbrated facts of the case are that statement of Rajinder was recorded before the Police, wherein, it was alleged that his victim daughter (name concealed) was studying in 10th class in Shaheed Bhagat Singh Public School. On 18.10.2021, she left home for school at 7:00 am, however, she did not return from school. It was stated that she was 15½ years of age. Request was made for search of his daughter. On the basis of the statement of the complainant, a formal FIR was registered. The victim was recovered on 19.10.2021 and her statement under Section 164 Cr.P.C. was recorded. The victim deposed regarding the accused including the petitioner having committed rape upon her. Hence, the petitioner was arrested on 21.10.2021. The petitioner approached the Fast Track Special Court, Hisar for grant of bail twice, however, his prayer was declined both the times. Thereafter, the petitioner approached this Court twice by way of filing CRM-M-22289-2022 and CRM-M-9370-2023, however, the same were dismissed as withdrawn vide order dated 27.01.2023 and 27.02.2023,

respectively. Hence, the petitioner has approached this Court again by way of filing the present third 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 as per allegations, the victim herself left the home alongwith the petitioner on his motorcycle and thereafter, she remained with him throughout the day, from there she left and met her brother-in-law i.e. co-accused Satpal. He submits that in her statement under Section 164 Cr.P.C., she levelled allegations of rape upon all three accused, however, two of the co-accused have already been granted bail. He submits that after recovery the victim was medically examined and samples taken were sent for DNA test. It is submitted that as per DNA report, the same did not match with that of petitioner, however, the DNA profile matched with co-accused Satpal and Pawan, who are already on bail. It is submitted that the petitioner is behind bars for last more than two years and all the material witnesses including the victim have already been examined. He submits that the petitioner has no criminal antecedents and thus, in view of overall facts and circumstances of the case, he deserves to be granted bail.

Per contra, learned State counsel has opposed the submissions made by learned counsel for the petitioner. She has submitted that admittedly the victim was 15½ years old and thus, a minor. She submits that there are specific allegations made by the victim in her statement recorded under Section 164 Cr.P.C., wherein it is stated that the victim was taken away by petitioner on his motorcycle from the school and thereafter, committed rape upon her in the hotel. She submits that the motorcycle which was used in the offence has also been recovered on the disclosure of the petitioner. However, she submits that co-accused are already on bail.

She submits that the prosecutrix has already been examined by the trial Court and out of total 21 prosecution witnesses, 5 witnesses, have been examined. On instructions from ASI Virender, she has also apprised the Court that the petitioner is not involved in any other case. She further submits that the case of the petitioner is not at par with the co-accused.

Heard.

Evidently, the prosecutrix went missing from the home on 18.10.2021 and thereafter, she was recovered on the next day i.e. 19.10.2021. As stated before this Court, all the material witnesses including the victim have been examined before the trial Court. There is nothing on record to show that the petitioner is involved in any other case. It has been submitted before this Court that co-accused, namely, Pawan and Satpal against whom allegations of rape have been levelled by the prosecutrix, are already enlarged on bail. 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, this Court is 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.

Considering that the trial would take sufficiently long time in its conclusion, 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 on his furnishing local surety.

Nothing said herein shall be construed as an expression of opinion on the merits of the case.

23.11.2023
sharmila

Whether Speaking/Reasoned
Whether Reportable

(RAJESH BHARDWAJ)
JUDGE

: Yes/No
: Yes/No