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

CRM-M-27146-2023

Date of decision : 02.06.2023

Baljinder Singh**.....Petitioner****versus****State of Haryana****..... Respondent****CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ*********

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

Mr. Kirpal Singh Thakur, AAG, Haryana.

*********RAJESH BHARDWAJ, J. (Oral)**

This is the second petition filed by the petitioner praying for grant of regular bail in case FIR No.19 dated 05.08.2021, under Sections 366-A, 376(3) of IPC and Section 4 of POCSO Act, registered at Police Station Women Dabwali, District Sirsa.

Adumbrated facts of the case are that statement of the victim (name concealed) was recorded wherein she alleged that her age was 16 years and she was studying in 10th standard in Government School. On 04.08.2021 at about 02:30 PM when she was coming from the school, two boys namely, Baljinder son of Kala and Mangal son of Raj were found standing near the temple. Finding her alone, both of them dragged her to an empty house where Baljinder forced her to do wrong things with him and thereafter, put a palli on her, he left. So far as Mangal is concerned, he already left the place. Thereafter, her Tai Birsa Devi came to tether animals and finding her in that condition, she picked her up and left her at home. She narrated the whole incident to her family members and request was made to

take legal action against the culprits. On the basis of the statement, formal FIR was registered and the investigation commenced. Statement of the prosecutrix was recorded under Section 164 Cr.P.C. She was medically examined and petitioner was arrested on 12.08.2021 and after completion of investigation, challan was presented. Petitioner approached the Court of learned Additional Sessions Judge, Fast Track Special Court, Sirsa praying for grant of bail. However, after hearing counsel for both the sides, learned Additional Sessions Judge declined the same vide his order dated 04.06.2022. Aggrieved by the same, petitioner on the earlier occasion approached this Court by way of filing CRM-M-33442-2022, however, the same was dismissed as not pressed vide order dated 21.11.2022. Hence the petitioner has approached this Court by filing this present petition praying for grant of regular bail.

Learned counsel for the petitioner has vehemently contended that the petitioner has been falsely implicated in this case. He further submits that the FIR in question in the present case has been recorded on the statement made by the victim. He submits that the alleged occurrence is of the day time and in the midst of the village wherein the victim alleged that the petitioner along with Mangal dragged her to one abandoned house which is not possible in the midst of the village. He further submits that the victim initially refused to undergo the medical test, however, later on, she agreed. He has submitted that as per her own statement, she was taken to her home from the place of occurrence by her Tai. He submits that though the occurrence is of 04.08.2021, however, the FIR was registered on the next day i.e. on 05.08.2021 after about due deliberation by distorting the facts of the case. He submits that the victim has been examined by the trial Court as PW-1. He submits that while appearing as PW-1 the prosecutrix made

material improvements in her statement where she deposed that she never mentioned about the second boy Mangal. It was specifically alleged by her that petitioner and Mangal both dragged her together in an abandoned house. He further submits that in her statement recorded under Section 164 Cr.P.C. on 06.08.2021, she specifically deposed about both the accused Baljinder and Mangal who were found standing near the temple when she was returning from the school. He submits that the petitioner is behind bars from last about almost 02 years. The victim and her mother who are the material witnesses already stand examined and thus, there is no probability of the petitioner influencing the material witnesses of the prosecution. He further submits that petitioner has no criminal antecedents and thus, in the facts and circumstances of the case, he deserves to be granted bail.

Learned State counsel, on the other hand, has opposed the submissions made by counsel for the petitioner. He, on instructions from SI Sunita Rani, submits that the prosecutrix in the present case is less than 18 years of age and thus, even if there was any consent, the same has no legal sanctity. He submits that the victim and her mother have been specifically examined and they have duly supported the case of the prosecution. He has further submitted that during the investigation, mother of the victim has given statement that on enquiry, they have found that though the name of Mangal was mentioned in the FIR but he was not having any complicity in the occurrence. He submits that out of 21 prosecution witnesses, 02 witnesses including the mother and the victim have already been examined and rest 19 witnesses are yet to be examined. He further submits that as per the instructions, petitioner has no criminal antecedents.

I have heard counsel for the parties and perused the record.

Evidently, petitioner is behind bars since 12.08.2021. The victim and her mother already stand examined. There is nothing on record to show that the petitioner has any criminal antecedents. Though the prosecutrix named two accused i.e. the petitioner and the second as Mangal however, during investigation, it was stated that Mangal had no role to play in this occurrence and before the Court also the victim had not mentioned the name of the second accused. Thus, there are material discrepancies in her depositions. As the material witnesses already stand examined obviously there is no possibility of tampering with the evidences of these material witnesses.

The veracity of the allegations would be assessed only after the conclusion of the trial and on the appreciation of evidence to be led by both the parties before the trial Court. Keeping in view the arguments raised by both the sides and perusing the record, 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.

02.06.2023
m. sharma

(**RAJESH BHARDWAJ**)
JUDGE

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