

**206 IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH****CRM-M-34112-2022****Date of decision : 24.04.2023****Mithun****.....Petitioner****versus****State of Haryana****..... Respondent****CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ****\*\*\*****Present :- Mr. Aditya Sanghi, Advocate  
for the petitioner.****Mr. B.S. Virk, DAG, Haryana.****\*\*\*****RAJESH BHARDWAJ, J. (Oral)**

Prayer in the present petition is for grant of regular bail to the petitioner in case FIR No.132 dated 28.07.2020, under Sections 363, 366-A, 376(2)(N) of IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012 of IPC, registered at Police Station Baragudha, District Sirsa, Haryana.

Adumbrated facts of the case are that the complaint was lodged by mother of the victim wherein she alleged that she is widow and do the labour work. She had one son and four daughters. Her youngest daughter was of the age of 14 years. On 28.07.2020 in the morning at about 10:00 AM, her daughter went somewhere. It was suspected that Mithun son of Ramesh had enticed her away. Request was made to take legal action against the culprit. On the basis of same, complaint was lodged and formal FIR was registered and investigation commenced. During investigation, the victim was recovered on 04.08.2020. She was medically examined and produced before the Magistrate for recording her

statement under Section 164 Cr.P.C. Petitioner-accused was arrested on 05.08.2020. He approached this Court on the earlier occasion by way of filing CRM-M-43309-2020 which was allowed to be withdrawn vide order dated 08.04.2022. Thereafter, he again approached the learned Additional Sessions Judge, Fast Track Special Court, Sirsa praying for grant of regular bail. However, learned Additional Sessions Judge, Fast Track Special Court declined the same vide order dated 17.05.2022. Aggrieved by the same, petitioner has approached this Court by way of filing the present petition.

Learned counsel for the petitioner has vehemently contended that petitioner is a young boy of 21 years of age and he has been falsely implicated in this case. He submits that as per the case of prosecution, alleged victim went missing from her home on 28.07.2020 and thereafter, she was recovered after about 07 days i.e. 04.08.2020. It is submitted that during this period i.e. about 07 days, alleged victim remained in public places and had been travelling by public conveyance and there is nothing on record to show that there was any resistance. He submits that soon after her recovery, the victim was produced before learned Magistrate for recording her statement under Section 164 Cr.P.C. which was recorded on 04.08.2020. She deposed before the learned Magistrate that she had a quarrel with her mother and being angry, she went to her sister at Dabwali Pathane. She deposed that nothing wrong was happened with her. Learned counsel submits that thereafter, as per her consent, she was sent in the custody of her mother. He has submitted that it is under the pressure of the family members when she appeared before the learned trial Court, she levelled allegations against the petitioner of committing

rape with her without her consent. He has submitted that the deposition regarding committing rape with her is a tutored version only in order to falsely implicate the petitioner. He submits that the petitioner is behind bars from last more than 2 ½ years and the prosecution has not been able to conclude the trial so far. He submits that the petitioner has fundamental right for a speedy trial which is being denied in this case. He further submits that petitioner has no criminal antecedents and thus, in the facts and circumstances of the case, when the prosecutrix and the complainant already stand examined and the petitioner has no criminal antecedents, 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 ASI Jagpal Singh, submits that even if the prosecutrix is a consenting party that too have no legal sanctity as admittedly she is 14 years of age and thus, being minor her consent has no meaning. He has submitted that the prosecutrix has been duly examined by the trial Court and she has specifically deposed that she was stated to be raped by the petitioner. He however, submits that the swabs were taken for her medical examination and as per her DNA report, it has been matched with the semen of petitioner. He submits that as per his instructions, out of 22 prosecution witnesses, 10 witnesses including the prosecutrix and the complainant already stand examined. However, he further submits that the petitioner has no criminal antecedents.

I have heard counsel for the parties and perused the record. Evidently, the petitioner is behind bars since 05.08.2020. As per case of prosecution, the victim went missing from her home on 28.07.2023 and

was recovered after about 8 days thereafter i.e. on 04.08.2020. Her statement was recorded under Section 164 Cr.P.C. wherein she deposed that she left the house voluntarily in anger with her mother. There is nothing on record to show that the petitioner has any criminal antecedents. As submitted before this Court out of 22 prosecution witnesses, 10 witnesses including the prosecutrix and victim already stand examined and thus, apprehension of the petitioner's influencing the victim apparently do not survive.

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. This Court would refrain itself from commenting anything on the merits of the case. The trial of the case will take sufficiently long time. 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.

( RAJESH BHARDWAJ )  
JUDGE

24.04.2023  
m. sharma

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