

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(206)

CRM-M-53990-2022

Date of Decision: 04.01.2023

Paras

--Petitioner

Versus

State of Haryana

--Respondent

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

Present:- Mr. K.S. Dhaliwal, Advocate for the petitioner.

Mr. Kirpal Singh, AAG, Haryana.

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.69 dated 10.3.2021 under sections 4(2) of POCSO Act, sections 376(3), 452 IPC and section 3(2)(v) of SC/ST Act, registered at Police Station, Sector 13-17, Panipat, District Panipat.

As per factual matrix, a complaint was lodged by the complainant, who is mother of the victim, wherein it was alleged that she was mother of two children. The son was 12 years old and the daughter (victim) was 15 years of age. It was further alleged that on 10.3.2021 she and her husband went from their home for the job and her daughter i.e. the victim was alone at home. They returned back in the afternoon and her daughter told that Paras i.e. the present petitioner came to their home and forcibly raped her. A request was made to take legal action against the culprit.

The FIR in question was lodged and investigation commenced.

The victim was medically examined and her statement under section 164

Cr.P.C was recorded. The petitioner was arrested on 11.3.2021 itself. He approached the learned Addl. Sessions Judge, Fast Track Court (POCSO), Panipat for grant of bail, however, after hearing the parties, the same was declined vide order dated 29.9.2022. Aggrieved by the same petitioner approached this court for grant of bail by way of filing CRM-M-10192-2022 which was permitted to be withdrawn vide order dated 15.3.2022. The petitioner has again approached this court by way of present petition praying for grant of bail.

Learned counsel for the petitioner vehemently contends that the petitioner has been falsely implicated in the present case by the mother of the victim. He submits that about 6 months prior to the date of occurrence the complainant side was tenant of the father of the petitioner and on account of some dispute the present FIR was lodged as an act of vendetta. Counsel submits that the allegations against the petitioner were false and frivolous which is proved from the very fact that during investigation blood samples of the petitioner was taken for DNA sampling and as per the DNA Report, no opinion could be given as samples could not be compared with the DNA profile of the petitioner. To strengthen his arguments, counsel has further submitted that the learned Trial Court has examined the victim and his mother as PW-1 and PW-2 respectively. Both these witnesses have not supported the case of prosecution and hence were declared hostile on the request of learned P.P. It is submitted that petitioner is behind bars for the last about 2 years and prosecution has failed to examine even half of the witnesses cited in the challan. He submits that petitioner has no criminal antecedents and thus he deserves to be granted the benefit of bail.

On the other hand, learned State counsel on instructions from ASI Dilbag Singh submits that there are specific allegations against the petitioner. He submits that the victim in this case was 15 years of age at the time of occurrence and thus was minor. He submits that though the victim supported the case of prosecution in her statement recorded under section 164 Cr.P.C, however, while being examined as PW-1 before the learned Trial Court she and her mother have not supported the case of prosecution and thus were declared hostile. It is submitted that out of the total 21 prosecution witnesses only 5 have been examined. 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.

Evidently, petitioner is behind bars since 11.3.2021. The victim and her mother have been examined by the learned Trial Court and both these witnesses have not supported the case of prosecution and thus were declared hostile. In her deposition before the learned Trial Court victim deposed that some unknown boy teased her on the way back from school and the police obtained her signatures on the blank papers. She further deposed that she did not know the accused present in the court. There is nothing on 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

04.01.2023

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