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

-.-

CRM-M-10564-2021

Date of decision : 11.08.2021

Birbal Singh

.....Petitioner

versus

State of Punjab

.....Respondent

**CORAM: HON'BLE MRS. JUSTICE ALKA SARIN**

Present: Mr. Narinder Singh, Advocate for the petitioner

Ms. Bhavna Gupta, DAG Punjab

**ALKA SARIN, J.**

Heard through video conferencing.

This is the second regular bail petition under Section 439 of the Code of Criminal Procedure, 1973 for grant of bail in FIR No.0014 dated 08.02.2020 under Sections 376, 452, 323, 506 IPC registered at Police Station Jaurkian, District Mansa. The first petition under Section 439 CrPC (CRM-M-37603-2020) was dismissed as withdrawn on 18.11.2020.

As per the allegations in the FIR dated 08.02.2020 lodged by the Prosecutrix, she is 20 years old and is a student of BA First Year. On 06.02.2020 the complainant was alone at home as her parents had gone to some relatives' house. Around 5.00 pm the petitioner, who is the complainant's neighbour, came to her house and committed a bad act with

her without her consent. When the complainant tried to make a noise the petitioner threatened to kill her and when she told the petitioner that she would inform her parents about the incident he gave her a 'Soti' blow on her shoulder. The complainant received bruise and scratches on her body while the petitioner committed the bad act with her. Out of fear the complainant did not tell anybody about the incident but on the night of the next day (07.02.2020), due to her injuries and pain, she informed her parents about the incident. On the morning of 08.02.2020 at about 6.00 am the complainant's uncle got a private car arranged and got her admitted in the Civil Hospital, Mansa where she is undergoing treatment.

The counsel for the petitioner has urged that the petitioner has been falsely implicated in the case. The FIR was lodged two days after the alleged incident and thus there was a delay in the medical examination of the Prosecutrix. According to the counsel, there was friendship between the petitioner and the Prosecutrix which is evident from the chat transcripts Annexure P-1 and the photographs Annexure P-2 and also intimacy between them. Counsel for the petitioner has submitted that the FIR was lodged after the parents of the Prosecutrix discovered about their relationship. He has further argued that the physical relations between the petitioner and Prosecutrix was consensual. Counsel for the petitioner has also contended that the charges have been framed and several prosecution witnesses have already been examined including the Prosecutrix. He has also contended that after the withdrawal of the first petition for regular bail the circumstances have changed as the charges have been framed, some prosecution witnesses examined and also the period in custody of the petitioner has increased.

Learned State counsel has opposed the bail petition and has

filed a status report dated 27.03.2021 by way of affidavit of Amarjit Singh, PPS, Deputy Superintendent of Police, Sub-Division Sardulgarh, District Mansa. On the basis of the status report she has submitted that the petitioner was apprehended on 10.02.2020. The Prosecutrix was medically examined on 08.02.2020 and her statement under Section 164 CrPC was recorded before the Magistrate on 10.02.2020. She further submitted that in the potency test of the petitioner it was opined "*There is nothing to suggest that patient cannot perform sexual intercourse*" and in the DNA Report of the Prosecutrix it was opined "*possibility of sexual intercourse can't be ruled out*". According to the State counsel there are 21 prosecution witnesses of which 3 have been examined, including the Prosecutrix, and 2 have been given up.

I have heard learned counsel for the parties.

In the present case the petitioner and the Prosecutrix, who is aged 20 years, were known to each other, the petitioner lives opposite to the house of the Prosecutrix. The chat transcripts Annexure P-1 and the photographs Annexure P-2 are items of evidence which are to be proven. Though counsel for the petitioner has submitted that the FIR was lodged after the parents of the Prosecutrix discovered about their relationship and that the physical relations between the petitioner and Prosecutrix was consensual, this is a matter to be decided during the trial. At this stage, the investigation stands completed and the charges have been framed and some prosecution witnesses have been examined including the Prosecutrix. The petitioner has been in custody since 10.02.2020. As such, further detention of the petitioner for an indefinite period would, therefore, not be called for at this stage. In these circumstances, without commenting any further on the

merits of the present case as a whole, the prayer of the petitioner for regular bail is allowed and he is ordered to be released on regular bail subject to his furnishing bail bonds/surety bonds to the satisfaction of the Illaqa Magistrate/Duty Magistrate/Trial Court concerned.

However, the Prosecution will always be at liberty to apply for cancellation of bail in case the petitioner is found to be misusing the concession of bail in any manner.

It is also made clear that any observation made herein shall not be treated as an expression of opinion on the merits of the case.

Disposed off.

August 11, 2021  
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**(ALKA SARIN)**  
**JUDGE**

NOTE: Whether speaking/non-speaking: Speaking  
Whether reportable: YES/NO