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

CRM-M No. 35420 of 2021 (O&M)

Date of decision: 20.12.2021

Bir Singh**...Petitioner****Versus****State of Haryana****...Respondent****CORAM : HON'BLE MR. JUSTICE ARUN MONGA**

Present : Mr. Sandeep Sharma, Advocate, for the petitioner.

Mr. Saurabh Mohunta, Deputy Advocate General, Haryana.

ARUN MONGA, J. (ORAL)**CRM-40833/2021**

Criminal Misc. is allowed and the accompanying statement of Liyakat (Complainant) and Barkat (uncle of the prosecutrix) annexed as Annexures P-13 and P-14 are taken on record.

CRM-M No. 35420/2021

This is second foray of petitioner before this court, seeking regular bail in FIR No. 20 dated 04.05.2018, registered under Sections 342, 363, 366-A, 376-D, 506 read with Section 34 IPC and Sections 6 and 7 of the Protection of Children from Sexual Offences Act, 2012, at Women Police Station Charkhi Dadri, District Charkhi Dadri, having got the first petition bearing CRM-M No.18243 of 2020 dismissed as withdrawn on 04.09.2020.

2. Per FIR, on 04.05.2018, complainant (father of the prosecutrix) lodged an FIR with the allegations that on the intervening night of 03/04.05.2018 in between 12.00 a.m. and 02.00 a.m., his daughter came to

his shop for providing him tea. When she was returning back, she was

kidnapped by petitioner Bir Singh, Sonu, Naveen and one unknown boy in a Bolero vehicle bearing no. HR-80-4100. Complainant ran after the vehicle but they fled towards village Naurangabad. Victim is minor whose date of birth is 03.09.2000. When complainant tried to trace her, she was found in a room in the fields of Jorawar at about 7.00 a.m. During that time, all the accused were there. She told him that she was gang raped by Bir Singh (petitioner), Sonu, Naveen and another boy and threatened to kill her if she disclosed anything to anyone. On the aforesaid statement, FIR was registered and petitioner as well as his accomplices were arrested on 05.05.2018. Challan has already been presented. Prosecution evidence is going on.

3. Learned counsel for the petitioner submits that the petitioner had consensual intimacy with the prosecutrix for about 2½ years and both had been on regularly talking on their mobile phones. The petitioner has been falsely implicated. He further states that the prosecutrix was examined on 19.02.2020. She was declared hostile on the request of Public Prosecutor. Mother of the prosecutrix was examined on 02.04.2021. Even she has been declared hostile on the request of learned Public Prosecutor. One of the co-accused, namely, Sonu @ Ashok has since been granted regular bail by a Co-ordinate Bench of this Court vide order dated 28.02.2020 passed in CRM-M No. 29924 of 2019. Whereas petitioner continues to be in custody since 05.05.2018. He submits that no useful purpose would be served by keeping the petitioner in preventive custody any more.

4. Learned State counsel opposes the bail plea of the petitioner. He argues that there are specific allegations against the petitioner in the FIR.

He submits that there is every likelihood that he may influence the witnesses.

5. I have heard rival contentions of the respective learned counsels.

6. On a Court query, learned State counsel does not controvert that all private witnesses have been examined and testimony of only official witnesses is pending. In the premise, I am of the view that there is no likelihood of the petitioner to influence any of the witnesses in case he is granted concession of bail.

7. Recording of the statements of the rest of the witnesses will still take some time. The petitioner is in custody since 05.05.2018. The argument of the learned State counsel that the petitioner is likely to influence the witnesses, *prima facie* does not seem to be tenable as rest of prosecution witnesses are officials.

8. The pending trial is also not likely to conclude anytime soon as the Courts are currently functioning under certain restrictions caused by COVID-19 pandemic and till outcome thereof, to keep the petitioner in custody merely on the ground of apprehension, seems to be improper and unfair at this stage.

9. Considering the overall scenario, coupled with prolonged detention already undergone, without commenting on the merits of the case, this petition is allowed. I am of the view that no useful purpose would be served to keep the petitioner in further preventive custody.

10. Accordingly, petitioner is directed to be released on bail, on his furnishing bail bonds and surety bonds to the satisfaction of learned trial

Court, where his case is being tried and in case trial Judge is not available,
before learned duty Judge, as the case may be.

20.12.2021

vs

(Arun Monga)
Judge

Whether speaking/reasoned : **Yes/No**

Whether reportable : **Yes/No**