

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

219

CRM-M-49917 of 2021
Date of decision:03.12.2021

Jatin

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. R.S.Mamli, Advocate for the petitioner.

Ms. Deepshikha Chauhan, AAG, Haryana.

SUVIR SEHGAL, J. (Oral)

Instant petition has been filed under Section 439 Cr.P.C seeking grant of regular bail to the petitioner in case FIR No.0040 dated 24.04.2021 registered under Sections 363, 506 of Indian Penal Code, 1860 and Section 6 of Protection of Children from Sexual Offences Act, 2012 at Women Police Station, Manesar, District Gurugram (Annexure P-1).

As per the case of the prosecution, FIR (Annexure P-1) came to be registered on the complaint of a minor girl (hereinafter referred to as the victim/prosecutrix) on the allegation that she was on friendly terms with Jatin (present petitioner) and was regularly in touch with him. On 22.04.2021, Jatin called her up on phone and at about 11.50 p.m., when her family members were sleeping, allured her and took her on his motorcycle towards forest area, where he forced himself upon her. He told her not to disclose the incident to anyone and threatened that otherwise she and her family members will be eliminated. Later on, he dropped her near her house.

Counsel for the petitioner submits that though the prosecutrix has levelled allegation of sexual assault against the petitioner, yet in her statement (Annexure P-3) recorded in Court, she has stated that she was on friendly terms with him, who never used any force on her. Counsel submits that the prosecutrix has specifically stated that the petitioner never enticed her nor did he rape her on 22.04.2021. Counsel has also made a reference to the MLR, to submit that in the history of the incident as recorded on the statement of the prosecutrix, she has stated that on 22.04.2021, she went with the petitioner of her own will. It has been urged that upon medical examination, no injuries were found on the person of the prosecutrix. Still further, by making a reference to the testimony of the victim's parents, Annexures P-2 and P-4, respectively, counsel submits that even they have not supported the case of the prosecution. He submits that the petitioner, who is in custody since 02.05.2021, is no longer required for custodial interrogation.

Per contra, State counsel upon instructions from L/ASI Geeta, has opposed the petition and by referring to the statement of the prosecutrix recorded under Section 164 Cr.P.C., she has submitted that her statement recorded before the Judicial Magistrate, is inconsonance with the allegations levelled in the FIR. She submits that even in the medical opinion, it has been mentioned that possibility of sexual assault cannot be ruled out. She submits that FSL report, which has been received, is as under:-

“1. Semen could not be detected on exhibit-I(Vaginal Swab) and exhibit-2 (Cervical Swab).”

As per her instructions, trial is progressing and 03 out of 13 prosecution witnesses, have been examined.

Having considered the above circumstances of the case, this Court is *prima facie* of the view that involvement of the petitioner in the offence, remains debatable. Keeping in view the fact that the statements of the prosecutrix and other material witnesses have been recorded and the petitioner, who is not involved in any other criminal case and is in custody since last more than 07 months, this Court is of the opinion that he is entitled to be released on bail as the trial is likely to take time to conclude.

Without delving into the merits or demerits of the arguments addressed by counsel for the parties, the petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate concerned.

It is clarified that any observation made hereinabove shall not be construed to be a reflection of opinion on the merits of the case.

December 03, 2021
savita

(SUVIR SEHGAL)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No