

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

213+114

CRM-M-1549-2022 (O & M)
Date of decision:23.03.2022

Khushal

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Ishan Singh Cooner, Advocate for
Mr. Jagram Singh Cooner, Advocate
for the petitioner.

Ms. Mahima Yashpal, DAG, Haryana.

SUVIR SEHGAL J. (ORAL)

CRM-10303-2022

Allowed as prayed for.

Documents appended with the application are taken on record
as Annexures P-6 to P-10 respectively.

Main Case

This is the first petition filed by the petitioner under Section 439 of Cr.P.C. for grant of regular bail in case FIR No.223 dated 16.09.2021 registered for offences under Sections 363/366-A of IPC, 1860, (Sections 376 (2)(n) of IPC and Section 06 of the Protection of Children from Sexual Offences Act, 2012 were added later on) at Police Station Sadhaura, District Yamunanagar, Annexure P-1.

As per the case of the prosecution, FIR, Annexure P-1, has been registered on the statement of father of 17 years old girl (for short - “the prosecutrix”) on the allegation that his daughter is missing from her home since 13.09.2021 and despite extensive search, she could not be located. He has alleged that Khushal (present petitioner) has enticed her on the pretext of marriage.

Counsel for the petitioner has referred to the statement of the prosecutrix, Annexure P-4, recorded under Section 164 of Cr.P.C. to submit that she has stated that she was not allured by the petitioner, who has not indulged in any objectionable activities with her. Reliance has also been placed by the counsel upon the testimony of the prosecutrix as well as her father-complainant, Annexures P-2 and P-3, who were examined as PW-2 and PW-3, to submit that both the crucial witnesses have turned hostile and have not supported the case of the prosecution. He has also invited the attention of the Court to the testimony of the doctor, who examined the prosecutrix and deposed that there is no external injury on her person. He submits that the petitioner, who is in custody since 18.09.2021 deserves to be enlarged on bail as he is no longer required for custodial interrogation.

Per Contra, State counsel, upon instructions from ASI Rajesh, has opposed the petition and submitted that in the narration given to the doctor, the prosecutrix has stated that she had consensual physical relations with the petitioner. An argument has been raised by the State counsel that since the prosecutrix is a minor, her consent is immaterial. Upon further instructions, she submits that 09 out of 22 prosecution witnesses have been examined.

Having considered the submissions, this Court is of the opinion that the complicity of the petitioner in the crime would be a subject matter of debate before the trial court and the petitioner, who is in custody for the last more than six months and has an unblemished past, would be entitled to be released on bail as not only because the material witnesses have been examined, but also because the trial is likely to take time to conclude.

In view of the above, without adverting to the arguments raised, petition is allowed. The petitioner is ordered to be released on bail on 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 an expression of opinion on the merits of the case.

23.03.2022
sheetal

(SUVIR SEHGAL)
JUDGE

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