

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

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CRM-M No.4968 of 2022 (O & M)
Date of decision:05.05.2022

Birbal Singh @ Gaggi

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Raghav Goyal Chandiwal, Advocate
for the petitioner.

Mr. Prabhjot Singh Walia, AAG, Punjab.

SUVIR SEHGAL J. (ORAL)

CRM-14664-2022

Allowed as prayed for.

MLR of the complainant is taken on record as Annexure A-1.

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.101 dated 23.06.2021 registered for offences under Sections 376 and 506 of IPC, 1860, at Police Station Kabarwala, District Sri Muktsar Sahib, Annexure P-1.

Version of the prosecution is that FIR, Annexure P-1, has been registered on the statement of a 32 year old married lady (hereinafter referred to as - "the prosecutrix") having three children, on the allegation

that on 04.05.2021, when she was alone at her matrimonial home, Birbal Singh @ Gaggi (present petitioner), who is related to her, came at midnight and raped her. He threatened her while leaving. She kept quiet because of the threat and confided her husband, who came back 25 days later. The couple did not report the incident to the police for few days.

Counsel for the petitioner submits that false allegations have been levelled against the petitioner because of rivalry between the family. He submits that the prosecutrix as well as her husband have been examined as PW-1 and PW-2 and both of them have not supported the allegations in their testimony and have been declared as hostile. He submits that the petitioner, who is a young man of 26 years of age and is in incarceration since 24.06.2021, deserves to be enlarged on bail. He has also made a reference to the medical report of the prosecutrix to submit that no external injury has been found on the prosecutrix.

Per Contra, State counsel, upon instructions from ASI Malkit Singh, has opposed the petition and has submitted that the prosecutrix has supported the allegations in her statement recorded before the Magistrate under Section 164 of Cr.P.C. He has also referred to the narration of the incident given to the doctor as is reflected from the MLR, Annexure A-1. Still further, he submits that 02 out of 15 prosecution witnesses have been examined, however, he could not deny the fact that both the material witnesses have been declared hostile.

Having considered the submissions made by counsel for the parties, this Court is of the view that the involvement of the petitioner in the offence would remain a subject matter of debate before the trial court

and the petitioner would be entitled to be released on bail as the star witnesses of the prosecution have been examined and the trial, which is at an initial stage is likely to take time to conclude.

In view of the above, without adverting to the arguments addressed by counsel for the parties, 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.

Needless to mention, any observation made hereinabove shall not be construed to be an expression of opinion on the merits of the case.

05.05.2022

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(SUVIR SEHGAL)
JUDGE

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