

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

**CRM-M-5954-2021
Date of decision: 28.01.2022**

Wakil Khan

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. M. K. Sood, Advocate
for the petitioner.

Mr. Deepak Kumar Grewal, DAG, Haryana.

(Through video conferencing)

ARVIND SINGH SANGWAN, J. (Oral)

This is the second petition that has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No. 158 dated 04.03.2020, registered under Sections 363, 366-A of the IPC and Sections 4, 18 of the Protection of Children from Sexual Offences Act, 2012 at Police Station City Ballabhgarh, District Faridabad.

The first petition, bearing CRM-M-28722-2020, was dismissed as withdrawn on 23.09.2020.

Learned counsel for the petitioner submits that the new ground for filing the present petition is that the statement of the prosecutrix has already been recorded.

Learned counsel further submits that as per allegations in the FIR, registered at the instance of complainant, it is stated that his daughter 'K' (name not disclosed) was allured by the petitioner for getting married to him and when he started looking for him, he came to know that public has

caught hold of petitioner at Sector 2, Ballabhgarh and has handed over him to police. Thereafter, the complainant met his daughter, who told him that petitioner has tried to do bad act with her by forcibly kissing her and with intention to commit rape, he has broken the string of her *Salwar*.

Learned counsel further submits that the petitioner is a first offender; he is in judicial custody for the last about 01 year and 11 months and the statement of the prosecutrix has already been recorded, in which she has stated that on 04.03.2020, when she was going to the house of her friend, the petitioner met her on the way and offered her to sit on his motorcycle to drop her at the house of her friend, however, the petitioner took her in a park of Sector 2, Ballabhgarh instead of dropping her at her friend's house. In the park, the petitioner started molesting and with intention to commit rape on her, he broke the string of her *Salwar*. When she raised noise, people of the locality gathered there and saved her from the clutches of the petitioner and one of them called the police. The police reached there and caught hold of the petitioner.

Learned counsel for the petitioner further submits that it has come in the cross examination of this witness that the petitioner was working with her uncle in a dairy, from where the family of the prosecutrix used to take milk and there was a dispute between the parties with regard to payment of some money.

It is further submitted that as per allegations in the FIR, the petitioner has not taken the prosecutrix to any walled place, rather he has taken her to a park, which is a public place, therefore, it will be a matter of trial whether the intention of the petitioner was to commit rape upon prosecutrix in a public place or as per defence of the petitioner, he had

offered her to perform marriage.

Learned counsel for the petitioner further submits that as per statement of the prosecutrix, she is stated to be 17 years and 02 months of age at the time of incident and it has come in the statement of the prosecutrix that when she was taken to hospital, she made a statement that she does not want to be medico-legally examined as no rape was committed with her.

It is further submitted that since the statement of the prosecutrix has already been recorded, there is no possibility of tampering with the prosecution evidence.

Learned State counsel, on instructions from the Investigating Officer, has not disputed the factual position as well as the fact that statement of the prosecutrix and her father has already been recorded.

I have heard learned counsel for the parties.

Without commenting upon the merits of the case, considering the fact that the petitioner is in judicial custody for the last about 01 year and 11 months; he is not involved in any other case and also considering the fact that statement of the prosecutrix already stands recorded, the instant petition is allowed. The petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate concerned.

28.01.2022

Waseem Ansari

**(ARVIND SINGH SANGWAN)
JUDGE**

*Whether speaking/reasoned
Whether reportable*

*Yes/No
Yes/No*