

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(211)

CRM-M-6080-2022
Date of decision:- 06.07.2022

Shabad @ Mahatab

... Petitioner

Versus

State of Union Territory, Chandigarh

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Vikas Arora, Advocate with
Mr. Mohit Kumar, Advocate
for the petitioner.

Mr. Abhinav Gupta, Addl. P.P., U.T., Chandigarh
for respondent-U.T.

...

SUVIR SEHGAL, J. (ORAL)

Instant petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 (for short “the Code”) seeking grant of post-arrest bail in case FIR No. 167 dated 23.12.2019 registered for offences under Sections 376(3) and 506 of the Indian Penal Code, 1860 and Section 6 of the Protection of Children from Sexual Offences Act, 2012, at Police Station Sarangpur, U.T., Chandigarh, Annexure P-1.

Version of the prosecution is that FIR, Annexure P-1, has been registered on the statement of father of a 14 year old girl on the allegation that when his daughter complained of stomach ache, he discovered that she was pregnant. On enquiry, she confided in her parents that she is pregnant from Shabad @ Mahatab, present petitioner.

Counsel for the petitioner has argued that although in her statement recorded before the Magistrate under Section 164 of the Code, the prosecutrix has supported the allegations levelled in the FIR, but during her testimony, Annexure P-2, she has been declared hostile. Counsel submits that rather in her deposition before the Court, she has stated that she is 20 years of age and had married the petitioner. Still further, by referring to the status report filed on behalf of respondent-U.T., counsel for the petitioner submits that report of DNA test shows that the petitioner is not the biological father of the child delivered by the prosecutrix. Counsel submits that the petitioner, who is in custody since 24.12.2019, is no longer required for custodial interrogation all the crucial prosecution witnesses have been examined and he deserves to be released from detention.

Per contra, learned State counsel has opposed the petition and has submitted that the petition deserves to be dismissed keeping in view the gravity of allegations levelled against the petitioner. Still further, he urges that as per the school record of the prosecutrix, she is a minor. Upon instructions received from ASI, Kuldeep Singh Thakur, he submits that out of the 24 prosecution witnesses, only 6 remain to be examined.

Having heard counsel for the parties, this Court is prima facie of the view that the involvement of the petitioner in the crime and the age of the prosecutrix would remain a subject matter of debate before the Trial Court. The petitioner, who is in custody for the last more than two years and six months, would be entitled to be enlarged on bail as all the material prosecution witnesses, including the complainant have been examined.

Without adverting to the merits or de-merits of the arguments addressed by the counsel for the parties, petition is allowed. The petitioner is ordered to be released on bail on his furnishing adequate bail/surety bonds to the satisfaction of the Area Magistrate/Duty Magistrate concerned.

It is clarified that nothing said hereinabove shall be construed to be an expression of opinion on the merits of the case.

(SUVIR SEHGAL)
JUDGE

06.07.2022
Kamal

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