

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(204-1)

CRM-M-9877-2022
Date of decision:- 06.08.2022

Gurmail Singh

... Petitioner

Versus

State of Punjab

... Respondent

(204-2)

CRM-M-9880-2022
Date of decision:- 06.08.2022

Harjit Singh

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Rajinder Kumar Singla, Advocate
for the petitioner(s) in both cases.

Mr. Prabhjot Singh Walia, AAG, Punjab
for State-respondent (in both cases).

SUVIR SEHGAL, J. (ORAL)

This order will dispose of two cases bearing Nos. **CRM-M-9877-2022** titled as “**Gurmail Singh Versus State of Punjab**” and “**CRM-M-9880-2022** titled as “**Harjit Singh Versus State of Punjab**” as the petitioners in both the cases are accused in FIR No.430 dated 26.07.2021, registered for offences under Sections 376(2)(n), 376-D, 366, 344 and 120-B of the Indian Penal Code, 1860 and Section 6 of Protection of Children from Sexual Offences Act, 2012, at Police Station Zirakpur, District SAS Nagar, Annexure P-1, and have approached this Court through

separate petitions filed under Section 439 of the Code of Criminal Procedure, 1973 (for short “the Code”), seeking grant of regular bail.

Case of the prosecution is that FIR, Annexure P-1, has been registered by a 24 year old lady (for short “the prosecutrix”) on the allegation that she came in contact with Kuldeep Singh in 2011 when she was a minor. Kuldeep Singh took advantage of her innocence, raped her and threatened her. Kuldeep Singh repeatedly sexually assaulted her and even encouraged his friends to do so. Specific instances have been given in the FIR. Two boys were born to her. It has been alleged that on 24.11.2020, Kuldeep Singh, Harjit Singh (petitioner in CRM-M-9880-2022), Hardeep Kaur, Manpreet Kaur and Gurmail Singh (petitioner in CRM-M-9877-2022) came to her house, abducted her and her children and took them to village Bokhda, District Bathinda. She was confined in the house located in open fields where Kuldeep Singh, Harjit Singh and Gurmail Singh sexually assaulted her. Manpreet Kaur and Hardeep Kaur physically assaulted her and she was forced to sign some blank papers. The accused were forcing her to give her children in adoption to some family in Dubai, thereupon, she lodged the complaint.

Counsel for the petitioner(s) has contended that there is an unexplained delay of more than ten years in lodging the FIR. He submits that the story set up by the prosecution is fanciful and highly improbable. Counsel submits that Gurmail Singh is the father of the Kuldeep Singh and Harjit Singh is his brother. He submits that Kuldeep Singh was in the live-in-relationship with the prosecutrix and the relationship was to the

knowledge of the petitioners, though they did not approve of the same. By referring to disownment notice, Annexure P-10, and affidavit dated 31.07.2019, Annexure P-9, he urges that the petitioners' family have severed all ties with Kuldeep Singh. It is his argument that FIR, Annexure P-1, is a result of a fallout between the prosecutrix and Kuldeep Singh, wherein the entire family including ladies have been deliberately embroiled. Counsel submits that the petitioners, who have a clean past and are in custody since 29.07.2021, deserve to be enlarged on bail.

Per contra, learned State counsel, upon instructions from ASI, Pawan Singh, has opposed the petition and has submitted that the allegations levelled against the petitioners are serious. He submits that the prosecutrix has not only levelled specific allegations against the petitioners and other accused, but has also supported them in her statement under Section 164 of the Code as well as in her testimony. He, however, submits that the DNA report of the children has been received and it has been found that neither of the petitioners is the biological father of the children of prosecutrix. Still further, he submits that three out of fifteen prosecution witnesses have been examined, including the prosecutrix.

Having considered the submissions made by counsel for the parties, this Court is prima facie of the view that the culpability of the petitioners in the offence would remain a subject matter of debate before the Trial Court. The petitioners, who are in custody for the last more than one year, would be entitled to be released on bail as the prosecutrix, who is the most material prosecution witness, has been examined and the trial is

likely to take time to conclude as the prosecution has to examine twelve more witnesses.

Without adverting to the merits or demerits of the arguments addressed by counsel for the parties, both the petitions are allowed. Petitioners are ordered to be released on bail during the pendency of trial on furnishing adequate bail/surety bonds to the satisfaction of the Trial Court/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

06.08.2022
Kamal

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