

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(217)

CRM-M-10670-2022
Date of decision:- 17.03.2022

Rupesh Kumar

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

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

Ms. Deepshikha Chauhan, AAG, Haryana.

...

SUVIR SEHGAL, J. (ORAL)

Instant petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 seeking grant of post-arrest bail in case FIR No. 73 dated 01.05.2021, registered for offences under Sections 363 and 366-A of the Indian Penal Code, 1860 (Sections 6 and 12 of the Protection of Children from Sexual Offences Act, 2012 were added later on), at Police Station Sector-9, Ambala City, District Ambala, 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 on the allegation that during the night intervening 30.04.2021/01.05.2021, his daughter went missing and despite extensive search, she could not be located. He suspects that Rupesh Kumar (present petitioner), who is in relationship with his daughter, has enticed her on the pretext of marriage.

Counsel for the petitioner has placed reliance upon the statement of the prosecutrix, Annexure P-3, recorded under Section 164, Cr.P.C. on 24.05.2021, to submit that the prosecutrix has stated that she is in love with the petitioner, who met her mother with the proposal for marriage, which was turned down and thereafter he proposed running away. In the statement, counsel submits, the prosecutrix has further stated that she left her paternal home with him at 01:30 A.M. and went to Gannaur on his bike from where they boarded a bus for Bihar and stayed there for a few days. Counsel argues that though later under the influence of her parents, the prosecutrix has supported the prosecution in her evidence. Counsel contends that in the FIR, the complainant has admitted that the petitioner is in relationship with his daughter. Counsel asserts that the petitioner, who is a young boy of 22 years of age and is in custody since 08.05.2021, is no longer required for custodial interrogation as not only the investigation is complete, but even the prosecutrix and her mother have been examined.

Per contra, learned State counsel upon instructions from L/ASI, Sumanlata, has opposed the petition on the ground that the prosecutrix is a minor and her consent is immaterial. She has made a reference to the narration given by the prosecutrix to the Doctor to submit that there are specific allegations of sexual assault. Reference has also been made by her to the testimony of the prosecutrix.

Having considered the submissions made by counsel for the parties, this Court is of view that the complicity of the petitioner in the offence would remain debatable and the petitioner, who is in custody for the last more than ten months, would be entitled to be released on bail as the trial is at the initial stage.

Without examining the arguments addressed by counsel for the parties, petition is allowed.

Petitioner is ordered to be released on bail on his furnishing adequate bail/surety bonds to the satisfaction of the Illaqa Magistrate/Duty Magistrate concerned.

It is clarified that any observation made hereinabove shall not be construed to be a reflection of opinion on the merits of the case.

(SUVIR SEHGAL)
JUDGE

17.03.2022
Kamal

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