

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRM-M No.12738 of 2022

Date of decision:02.04.2022

Hira Kant Mishra

... Petitioner

Vs.

The State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Gaurav Datta, Advocate for the petitioner.

Mr. A.S. Gill, Sr. DAG, Punjab.

SUVIR SEHGAL J. (ORAL)

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.59 dated 13.05.2021 registered for offences under Sections 376/506 of IPC, 1860, and Section 06 of the Protection of Children from Sexual Offences Act, 2012 at Police Station Mulepur, District Fatehgarh Sahib, Annexure P-1.

As per the case of the prosecution, FIR, Annexure P-1, has been registered on the statement of a 15 year old girl (hereinafter referred to as - “the prosecutrix”) on the allegation that her father is a daily wager and her brother, Hira Kant, present petitioner, has been raping her, whenever, she has been alone in the house. As she was scared, she did not disclose this to any family member. On 11.05.2021, Hira Kant again tried to take advantage of the situation, but she shouted and on hearing her cries, when her mother came, her brother left the house. She confided the details to Lakhveer Kaur, an Asa Worker.

Counsel for the petitioner contends that the prosecutrix had been raped by a boy by the name of Kundan and in order to save him, the prosecutrix has named the petitioner. He contends that the prosecutrix gave birth to a stillborn child and as per the DNA Report, Annexure P-3, petitioner has not been reported to be the biological father of the baby. Still further, by referring to the deposition of the prosecutrix, Annexure P-2, counsel submits that she has

specifically stated that the petitioner never sexually assaulted her. Counsel submits that the petitioner, who is a young boy of 21 years of age and is in custody since 13.05.2021, deserves to be enlarged on bail as the trial is at the initial stage.

Per Contra, State counsel, upon instructions from ASI Jagjit Singh, has opposed the petition and has submitted that the prosecutrix, who is a minor, has named two boys, who sexually abused her. As per his instructions, FIR bearing No.372 dated 20.06.2021 has been lodged under Sections 376 and 506 of IPC, at Police Station Rauni, Saidpur, District Seetamani, Bihar, against Kundan, who is yet to be arrested. He, upon further instructions states that 17 out of 34 prosecution witnesses have been examined. He has filed custody certificate dated 01.04.2022, which is taken on record.

Having considered the submissions made by counsel for the parties, this Court is of the view that the complicity of the petitioner in the crime would remain debatable and the petitioner, who has an unblemished past and is in custody for the last more 10 months, would be entitled to be released on bail as the trial is likely to take time to conclude.

In view of the above, without adverting to the arguments raised, 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.

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

02.04.2022

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(SUVIR SEHGAL)
JUDGE

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