

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

211

CRM-M-18411-2022

Date of decision:02.12.2022

Abhishek Kumar

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Jaideep Verma, Advocate for the petitioner.

Mr. Aman Dhir, 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.313, dated 03.12.2020 registered for the offences under Sections 363, 366-A, 376 of IPC, 1860, and Section 04 of the Protection of Children from Sexual Offences Act, 2012, at Police Station Haibowal, District Police Commissionerate Ludhiana, Annexure P-1.

Counsel for the petitioner submits that FIR, Annexure P-1, has been registered on the statement of elder brother of a 17 year old girl (hereinafter referred to as “the prosecutrix”) stating that she is missing from her parental home since 02.12.2020 and despite extensive search, she could not be located. Counsel submits that the complainant has stated that he suspects the petitioner of alluring her. He urges that upon recovery, the prosecutrix in her statement recorded under Section 164 of Cr.P.C. has stated that she took the petitioner along with her, despite the fact that he did not want to go as she was a minor. By relying upon the testimony of the prosecutrix (PW-5), which has been appended as Annexure P-6,

counsel submits that she has deposed that she was neither abducted nor sexually assaulted by the accused. Counsel further submits that petitioner is in custody since 07.12.2020, and as star prosecution witnesses have been examined, therefore, the petitioner deserves to be released on bail.

Per Contra, learned State counsel, upon instructions from ASI Gurmil, has opposed the petition and has submitted that petitioner's DNA profile has matched with DNA profile obtained from vaginal swab. He submits that there are serious allegations against the petitioner. Still further, as per his instructions, 09 out of 12 prosecution witnesses have been examined.

Having considered the submissions made by counsel for the parties, this Court is *prima facie* of the view that the involvement of the petitioner in the offence and implication of alleged consent of the minor prosecutrix, would be adjudicated by the trial court. Petitioner, who is in detention for the last almost 02 years, is entitled to be released on bail as material prosecution witnesses have been examined and trial is likely to take time to conclude.

Without adverting to the merits or de-merits of the arguments addressed, petition is allowed. Petitioner is ordered to be enlarged 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.

02.12.2022

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(SUVIR SEHGAL)
JUDGE

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