

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

215

CRM-M-20844-2022
Date of decision: 27.07.2022

Harpyar Singh @ Makhana

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Mohit Sadana, Advocate
for the petitioner.

Mr. K.K. Beniwal, AAG, Punjab.

MANJARI NEHRU KAUL, J. (ORAL)

This is the second petition filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to the petitioner in case FIR No.0108 dated 07.06.2021 lodged under Sections 376(2)(N), 323, 506 and 34 of the Indian Penal Code, 1860 and Section 6 of the Protection of Children from Sexual Offences Act, 2012 registered at Police Station Sadar Dhuri, District Sangrur.

Learned counsel for the petitioner submits that subsequent to the withdrawal of the previous petition on 24.11.2021 (Annexure P-10), the testimony of the victim and her mother stands recorded before the trial Court, in addition to the receipt of the chemical examiner's report.

Learned counsel for the petitioner *inter alia* contends that from a perusal of the contents of the FIR in question it is clearly discernible that the relations if any between the victim (who was about 17 years 02 months) and the petitioner were consensual in nature.

Learned counsel, while drawing the attention of this Court to the

Annexures P-3 and P-4 which are text messages exchanged between the parties, submits that the factum of the petitioner and the victim being in a relationship finds due corroboration from a perusal of the same. He submits that it is thus evident that the allegations levelled in the FIR that the victim after being put under threat by the petitioner was forcibly raped is totally false and fabricated. He still further submits that the petitioner's false implication in the case in hand, finds further support from the medico legal report of the victim which has been annexed as Annexure P-2 wherein also there is no evidence forthcoming that it was a case of forcible sexual assault and furthermore the chemical examiner's report (Annexure P-9) also demolishes the case of the prosecution qua the alleged sexual assault carried out on the victim. He submits that no doubt the victim while stepping into the witness box did support the case of the prosecution, however, it was evident that on account of their relations turning sour, she had chosen to come up with a false version as reflected in the FIR. He prays that since the victim, who is the sole material witness, stands examined, further incarceration of the petitioner would serve no useful purpose as 17 more prosecution witnesses remain to be examined. Learned counsel submits that the petitioner is a man of clean antecedents and not involved in any other criminal case.

Per contra, learned State counsel while opposing the prayer and submissions made by counsel opposite on instructions submits that specific allegations of rape having been levelled against the petitioner by the victim who was a minor aged 17 years 02 months at the time of registration of the FIR. He further submits that since the victim has

supported the case of the prosecution, the petitioner be declined the concession of bail. However, he has not been able to controvert the findings in medico legal report as well as the chemical examiner's report. He has not disputed the submissions made by counsel opposite qua the petitioner not being involved in any other criminal case much less a case of similar nature.

I have heard learned counsel for the parties and perused the material placed on record.

In the facts and circumstances as enumerated hereinabove, this Court deems it fit to extend the concession of bail to the petitioner who has now been in custody since June, 2021 coupled with the fact that material witness i.e. the victim stands examined and 17 prosecution witnesses remain to be examined, hence, the trial shall take considerable time to conclude.

Accordingly, the instant petition is allowed. The petitioner be admitted to bail to the satisfaction of the trial Court/Duty Magistrate concerned. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

27.07.2022

Vinay

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No