

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

223

CRM-M-21082-2022

Date of decision: 20.05.2022

Mohan @ Dhillu

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Sandeep Gahlawat, 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 (for short “the Code”), for grant of regular bail in case FIR No.218, dated 09.06.2021, registered for offences under Sections 376-D, 376(3), 506 of Indian Penal Code, 1860, Section 3(2) (v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Sections 4 and 6 of Protection of Children from Sexual Offences Act, 2012, at Police Station Tosham, District Bhiwani, Annexure P-1.

Version of the prosecution is that FIR, Annexure P-1 has been registered on the statement of a 16 year old school going girl (for short 'prosecutrix') on the allegation that on an evening in the month of

February, 2021, when she stepped out of her home, a white Bolero stopped near her, two occupants came out of the vehicle, gagged her and forcibly took her to a farm where they intimidated her. Shashikant, whom she recognizes, raped her, while the other boy stood guard on one side. On reaching back home, she did not confide in anyone as she was scared. However, a few months later, she went to a Government Hospital where she was told that she is pregnant.

Counsel for the petitioner has contended that the petitioner has not been named in the FIR and the prosecutix has been making conflicting statements at different stages. Counsel has drawn attention to the testimony of the prosecution, Annexure P-5 to submit that she has categorically stated that petitioner has not sexually exploited her. Counsel submits that petitioner, who is in custody since 15.06.2021, deserves to be enlarged on bail as the star prosecution witness has been examined and there is no allegation in the FIR attracting offence under SC/ST Act.

Per contra, State counsel upon instructions from HC Sumit Kumar has opposed the petition on the ground that the prosecutrix is a minor and below 16 years of age. As per her instructions, 12 out of 29 prosecution witnesses have been examined and DNA report is awaited.

I have considered the submissions made by counsel for the parties.

This court is of the prima facie view that the complicity of the petitioner in the offence would remain a matter of trial and the petitioner who is in custody for the last more than 11 months is entitled to be enlarged on bail as there is little possibility of an early conclusion of the trial.

Without advertng to the arguments raised, petition is allowed.

Petitioner is ordered to be released on bail on furnishing heavy 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.

20.05.2022

pooja saini

(SUVIR SEHGAL)

JUDGE

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