

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

202-2

CRM-M No.24051 of 2021
Date of decision:31.10.2022

Binderpal

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. P.S. Sekhon, Advocate for the petitioner.

Mr. P.S. Grewal, 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.194, dated 16.09.2020 registered for offence under Sections 376 and 120-B of IPC, 1860, and Sections 05 and 06 of the Protection of Children from Sexual Offences Act, 2012, at Police Station City Kotkapura, District Faridkot, Annexure P-1.

Case of the prosecution is that FIR, Annexure P-1, has been registered on the statement of a 16 year old girl (hereinafter referred to as “the prosecutrix”) on the allegation that in the year 2014, when her parents left for Malaysia, she alongwith her siblings, was staying under the guardianship of her aunt-Sukhjeet Kaur. In the year 2018, her Bua, Harwinder Kaur, and her husband, Binderpal (present petitioner) took her to Kotkapura for getting her admitted in a school, but Binderpal had

an evil eye on her. He gave her intoxicating tablets and sexually assaulted her in the washroom of the house, while Harwinder Kaur pinned her down. She was 14 years of age at that time and did not reveal the incident to anyone as the accused had threatened that they will eliminate her. During the period from 01.09.2020 to 07.09.2020, when she was again brought to Kotkapura, Binderpal alongwith both his sons Mandeep, aged 21 years and Hemant, aged 19 years, sexually assaulted her. On reaching back to the village of her aunt, Sukhjeet Kaur, she informed her of the incident.

Counsel for the petitioner has argued that various criminal cases have been registered against the parents of the prosecutrix of swindling people of huge amount of money on the pretext of sending them abroad and therefore, they had fled the country. He contends that as the petitioner was stopping the prosecutrix from meeting a boy, petitioner's entire family has been falsely enmeshed in the criminal case. Referring to the testimony of the prosecutrix, who has been examined as PW-1, counsel urges that although she has supported the allegations in her examination-in-chief, but during the course of cross-examination, she has denied that she has been sexually assaulted by the petitioner or his sons. While inviting the attention of the Court to the FSL report, counsel submits that even the medical evidence does not support the allegations. Counsel asserts that the petitioner, who is a middle aged man and has a clean past, deserves to be enlarged on bail as he is in detention since 17.09.2020.

On the other hand, learned State counsel, upon instructions from ASI Surinderjit Singh, has opposed the petition and has submitted

that there are specific allegations against the petitioner of sexually assaulting the minor prosecutrix. He could not dispute her deposition, though by referring to the MLR, he submits that the examining doctor has opined that the possibility of sexual assault cannot be ruled out. As per his instructions, 05 out of 17 prosecution witnesses have been examined.

After having considered the submissions made by counsel for the parties, this Court is *prima facie* of the view that the culpability of the petitioner in the crime would remain a subject matter of debate before the trial court. Considering the nature of allegations, the fact that the prosecutrix, who is most material witness has been examined and the stage of trial, this Court is of the view that the petitioner deserves to be released from confinement during the pendency of the trial.

Without advertng to the merits or de-merits of the arguments addressed by counsel for the parties, 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.

31.10.2022

(SUVIR SEHGAL)
JUDGE

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