

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

(Sr. No. 226)

CRM-M No. 23979 of 2022

Date of decision : 15.07.2022

Tinku

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL

Present : Mr. Shivansh Malik, Advocate for the petitioner.
 Mr. Karan Sharma, DAG, Haryana.

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DEEPAK SIBAL, J. (Oral)

The present petition has been filed under Section 439 Cr.P.C. for the grant of regular bail in FIR No.456 dated 05.12.2020 registered under Sections 4 and 12 of the Protection of Children from Sexual Offences Act, 2012 and Sections 354-A, 506, 376(3), 120-B IPC (Section 6 of the Protection of Children from Sexual Offences Act, 2012 added later on) at Police Station Kalanaur, District Rohtak.

Briefly stated, the case of the prosecution is that the petitioner, who is the prosecutrix's uncle, took the prosecutrix to his house on the pretext of some work and thereafter, handed her over to main accused Arun, the petitioner's brother-in-law, who then raped the prosecutrix.

Learned counsel for the petitioner contends that the petitioner has been falsely implicated in this case; the petitioner has been in custody

since 19.12.2020; the petitioner has no other criminal case pending against him; the only allegations against the petitioner are of abetment with the main allegations of rape being against co-accused Arun Kumar – the petitioner's brother-in-law; there is unexplained delay of nearly 14 days in lodging of the FIR which is fatal to the prosecution's case; all the material witnesses of the prosecution stand examined and therefore, the petitioner is not in a position to influence them; as per photographs (Annexure P-11), screen-shot of video recording (Annexure P-12), recording of video call (Annexure P-13) and screen-shots of WhatsApp chat (Annexure P-14) the prosecutrix and the main accused – Arun Kumar were in a consensual relationship and therefore, there was no reason for the petitioner to entice the prosecutrix from her house to the petitioner's house; the prosecutrix being in a relationship with the main accused Arun Kumar would need no enticement to go to him; while appearing before the Trial Court, as a witness for the prosecution, the prosecutrix has admitted the afore-referred photographs (Annexure P-11) giving plausibility to the petitioner's defence; the reason to falsely implicate the petitioner is because after the relationship of the prosecutrix and the petitioner's brother-in-law Arun Kumar went viral it is petitioner and his wife who did not approve of their marriage; co-accused Sundari @ Monu who had earlier approached this Court through CRM-M No.9001 of 2022 – Sundari @ Monu Vs. State of Haryana has been granted regular bail and that since in the petitioner's trial 12 prosecution witnesses still remain to be examined, the same will take a long time to conclude.

Learned State counsel opposes the grant of bail to the petitioner on the ground that he abetted rape on a minor.

The effect of delay in lodging of the FIR and the defence taken by the petitioner for her false implication in the case would be considered by the Trial Court at an appropriate stage. However, the allegations against the petitioner are of abetment with the rape on the prosecutrix allegedly by co-accused Arun Kumar; there is no allegation of rape by the petitioner; the petitioner is in custody since 19.12.2020; the petitioner has no other criminal case pending against him; all the material witnesses of the prosecution already stand examined before the Trial Court and therefore, the petitioner is not in a position to influence them; co-accused Sundari @ Monu, against whom there were similar allegations, has already been granted regular bail by this Court and that since in the petitioner's trial 12 prosecution witnesses still remain to be examined, the same is likely to take a long time to conclude.

Keeping in view the above facts in totality, the present case is considered to be a fit one in which the petitioner be directed to be released on regular bail. Resultantly, subject to the satisfaction of the CJM/Duty Magistrate, Rohtak, the petitioner is directed to be released on bail.

It is clarified that the above observations have been made only for the limited purpose of deciding the present regular bail application and the same would not be construed to be an expression of opinion on the merits of the case.

15.07.2022
sunil yadav

(DEEPAK SIBAL)
JUDGE

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No