

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(216)

CRM-M-25846-2021
Date of decision:- 25.01.2022

Amit @ Tinku

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Rakesh Kumar Lathwal, Advocate for the petitioner.

Ms. Deepshikha Chauhan, AAG, Haryana.

...

SUVIR SEHGAL, J. (ORAL)

Heard through video conferencing.

This is the second petition filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail in case FIR No.86 dated 22.02.2020 registered for offences under Sections 294, 354, 376 and 506 of the Indian Penal Code, 1860 (Sections 354-D, 376 (2) (n), 452, 506, 509 and 511 were added later on) at Police Station Gannaur, District Sonapat (Haryana).

As per the version of the prosecution, FIR came to be registered on the complaint of the prosecutrix on the allegation that the petitioner has been raping her and threatening her for the last nine years, as a result of which her movement was restricted. She has alleged that on 05.01.2020, the petitioner threatened to kill her on phone and she possesses the call recordings. On 06.01.2020, he entered her house when she was alone and attempted to commit rape her and when she raised an alarm, he fled from the spot.

Counsel for the petitioner contends that the FIR lodged by the prosecutrix is a counter-blast to FIR No.19 dated 10.01.2020, Annexure P-6, registered by the wife of the petitioner against the sons of the prosecutrix. He submits that though it has been alleged in the FIR that the petitioner has been raping and blackmailing her for the last nine years, yet when the prosecutrix lodged an earlier FIR bearing No.180 on 03.05.2019, Annexure P-4, against the petitioner, she did not mention any incident of sexual assault. Still further, counsel contends that the prosecutrix had refused her medical examination by stating that the last sexual assault by the petitioner was in April 2019. Counsel submits that the first petition (CRM-M-31805-2020) filed by the petitioner was withdrawn after arguments on 13.10.2020, vide Annexure P-9, and thereafter the prosecutrix has been examined and her husband, who was also one of the prosecution witnesses has been given up. He submits that the petitioner, who is incarceration since 02.07.2020, is no longer required for custodial interrogation and the trial is not likely to conclude in the near future.

Per contra, learned State counsel by placing reliance upon the status report filed by way of an affidavit of Deputy Superintendent of Police, Ganaur, Sonipat, which is taken on record, submits that the allegations levelled by the prosecutrix in the FIR have been duly supported by her in her statement recorded under Section 164, Cr.P.C. as well as her testimony recorded in Court. She submits that the reason for refusal of medical examination by the prosecutrix has been duly explained by her. As per her instructions, statements of three witnesses have been recorded,

fourth has been given up and five prosecution witnesses are yet to be examined.

I have considered the respective submissions of counsel for the parties.

Having considered the facts and circumstances of the case, the Court is of the view that the material collected by the prosecution would remain debatable and the petitioner, who is in custody for the last almost one year and six months, would be entitled to be released on bail, as the material witnesses have been examined and the trial is likely to take time to conclude in view of the restricted functioning of the Courts due to the exponential increase in the reported cases of corona virus.

Without examining the arguments addressed by the counsel for the parties, the petition is allowed. The petitioner, namely, Amit @ Tinku, is ordered to be released on bail on his furnishing adequate bail/surety bonds to the satisfaction of the Illaqa Magistrate/Duty Magistrate concerned. The Trial Court may impose any additional condition it deems appropriate.

It is clarified that any observation made hereinabove shall not be construed to be a reflection of opinion on the merits of the case.

(SUVIR SEHGAL)
JUDGE

25.01.2022

Kamal

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