

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No.217

CRM-M-24325-2022

Date of decision : 07.09.2022

Sudhir Kumar

..... Petitioner

VERSUS

State of U.T., Chandigarh

..... Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Ms.Tanu Bedi, Advocate, for the petitioner.

Mr.Sumit Jain, Addl.P.P., UT, Chandigarh.

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.142 dated 31.12.2020 registered under Section 376(2)(n) IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012 at Police Station Sarangpur, U.T., Chandigarh.

The petitioner is being prosecuted for having sexually exploited the prosecutrix over a prolonged period of time on the pretext of marriage.

Learned counsel for the petitioner submits that the petitioner is a 22 year old boy; he has no other criminal antecedents; he is in custody since 03.01.2021; all material prosecution witnesses, including the prosecutrix, already stand examined in the petitioner's trial; the prosecutrix's MLR shows no injury on her person showing the falsity in the case of the prosecution; the doctor, who had medically examined the prosecutrix, while appearing before the Trial Court as PW-7, has stated that she cannot give any definite opinion to approve/disapprove sexual assault on the prosecutrix; there is no forensic evidence to support the allegations of rape; the first formal complaint by the prosecutrix with regard to the petitioner having sexually exploited her on the pretext of marriage was on 09.03.2018 on which date both the petitioner and the

prosecutrix had attained majority and therefore even if there were physical relations between them at that point of time the same being consensual would not attract application of Section 376 IPC; the allegations by the prosecutrix that she was raped on the pretext of marriage even while she was a minor are denied and in any case are not backed by any evidence except her bald statement; a similar complaint filed by the prosecutrix under Section 156(3) Cr.P.C. was dismissed by the Judicial Magistrate Ist Class, Chandigarh on 18.01.2019 and that since 10 prosecution witnesses still remain to be examined in the petitioner's trial, the same will take a long time to conclude.

Learned State counsel opposes the grant of bail to the petitioner on the ground that the petitioner has for a prolonged period raped a minor girl on the pretext of marriage.

The issues as to whether the petitioner raped the prosecutrix while she was a minor; if the prosecutrix had attained majority at the time when the alleged offences were committed then were the relations between her and the petitioner consensual and the effect of the statement by the doctor that she cannot give a definite opinion to approve/disapprove sexual assault on the prosecutrix as also of the dismissal of a similar complaint filed by the prosecutrix under Section 156(3) Cr.P.C. by the Judicial Magistrate Ist Class, Chandigarh, would be debated during the course of the petitioner's trial.

Nonetheless, the petitioner is a 22 year old boy; he does not have any other criminal antecedents; the prosecutrix's MLR shows no injury on her person; the petitioner is in custody for the last over one year and eight months; all material prosecution witnesses, including the prosecutrix, already stand examined in the petitioner's trial and that since 10 prosecution witnesses still remain to be examined, the petitioner's trial will take a long time to conclude.

In view of the above, 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, Chandigarh, 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.

07.09.2022
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[DEEPAK SIBAL]
JUDGE

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