

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

221

**CRM-M-26152-2022 (O&M)
Date of decision: 04.07.2022**

Dharmender Kumar

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. P.R.Yadav, Advocate for the petitioner.

Ms. Ankita Ahuja, AAG, Haryana.

SUVIR SEHGAL J.(ORAL)

This is the third petition filed by the petitioner under Section 439 of the Code of Criminal Procedure, 1973 (for short 'the Code') seeking grant of regular bail in case bearing FIR No.01 dated 01.01.2020 registered at Police Station Kanina, District Mahendergarh, Annexure P-1 for offence under Sections 323, 376/511, 452 and 506 of Indian Penal Code, 1860.

Case of the prosecution is that FIR, Annexure P-1 has been registered on the complaint of the prosecutrix that on 01.01.2020 at about 7:00 am when she had gone to give fodder to the cattle, her neighbour, Dharminder (present petitioner) entered her courtyard and forcibly took

her to the fodder room with an intention to rape her. On her raising an alarm, her parents reached the spot and the accused fled from the scene, threatening that he will get her raped and killed from his antisocial friends.

Counsel for the petitioner has referred to the testimony of the prosecutrix and has submitted that in the cross-examination, the entire case of the prosecution has been demolished. He submits that a cross-complaint was lodged by the wife of the petitioner which resulted in registration of FIR No.8 dated 03.01.2020, Annexure P-3 under Sections 323, 34, 354B, 452 and 506 IPC at the same police Station. He submits that the petitioner who is innocent and is languishing behind bars since 24.09.2020 deserves to be enlarged on bail as supplementary challan is yet to be presented against his brother who has been arraigned as a co-accused and the trial is likely to take time to conclude.

Opposing the petition, learned State counsel upon instructions from SI Sanju has made a reference to the medico-legal report, Annexure P-10 as well as to the statement of the prosecutrix recorded under Section 164 of the Code and her testimony, Annexure P-14. She has referred to the criminal past of the petitioner and has expressed an apprehension that in case the petitioner is released on bail, he is likely to abscond and influence the prosecution witnesses.

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

Specific allegations of attempt to rape have been levelled against the petitioner in the FIR which have been duly supported by the

prosecutrix in her statement before the Magistrate as well as in her deposition. Not only the petitioner has been named but the prosecutrix has also been consistent in her stand. Even in a narration of the incident, recorded by the Doctor on the MLR, Annexure P-10, she has named the petitioner. Furthermore, an examination of the MLR shows that the prosecutrix has injuries on her face and neck and the examining Doctor has opined that possibility of sexual assault cannot be ruled out.

A perusal of the paper book reveals that the petitioner has been evading the process of law and was declared as a proclaimed person vide order dated 29.06.2020. He approached this Court seeking grant of anticipatory bail without disclosing this fact and his petition was dismissed by this Court vide order dated 05.08.2020, Annexure P-12 observing that FIR, Annexure P-3, lodged by petitioner's wife is a counter-blast to the present FIR and has been recommended to be cancelled by the Investigating Agency. The petitioner failed to get any relief from the Supreme Court and the SLP preferred by him was dismissed vide order dated 18.09.2020, Annexure P-13. Even though, the order declaring the petitioner as a proclaimed offender was set aside by this Court on 17.02.2021, Annexure P-6 but this development alone would not benefit him as he has been named as an accused in two other cases. In one of the FIRs, Annexure P-23, petitioner is accused of stalking the complainant therein. Though, counsel for the petitioner has submitted that the said complainant has executed an affidavit in his favour, yet it shows that he probably is in an influential position or has a clout.

Keeping in view the totality of the facts and circumstances, the nature of allegations levelled against the petitioner, his antecedents and the

apprehension expressed by the State, this Court is not inclined to exercise discretion in his favour. Furthermore, previous two petitions seeking regular bail have been dismissed, after arguments, in February, 2021 and January, 2022 respectively. There is no change in circumstances nor any such change could be pointed out during the course of arguments. The mere fact that there is likely to be some delay in the trial because of the presentation of the supplementary challan against a co-accused, will not help the petitioner.

Finding no merit in the petition, the same is hereby dismissed.

It is clarified that nothing said hereinabove shall be construed to be an expression of opinion on the merits of the case and the trial Court shall conclude the trial uninfluenced by any observation made hereinabove.

04.07.2022

pooja saini

(SUVIR SEHGAL)

JUDGE

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