

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

(110)

CRM-39796-2022 IN/AND CRM-M-27499-2022

Date of decision: 29.10.2022

Gurmail Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Suvir Sidhu, Advocate with  
Mr. Sukhcharan S. Gill, Advocate  
for the applicant-petitioner.

Mr. Mohit Choudhary, AAG, Punjab.

...

**SUVIR SEHGAL, J. (Oral)**

**CRM-39796-2022**

Noticing the prayer made in the application, it is allowed.

Hearing of the main case is preponed from 06.12.2022 to today and it is ordered to be taken on Board.

Deposition of the prosecutrix, who has been examined as PW-2, is taken on record as Annexure A-1.

**CRM-M-27499-2022**

Instant petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 (for short "the Code") for grant of regular bail in FIR No.0018 dated 24.03.2022, registered for offences under Sections 376, 120-B and 506 of the Indian Penal Code, 1860, at Police Station Patara, District Jalandhar Rural, Annexure P-1.

Case of the prosecution is that FIR, Annexure P-1, has been registered by a 26 year old married lady (hereinafter referred to as “the prosecutrix”) on the allegation that she was married to Mathura Dass about 8 years back and has two children from wedlock. About two months ago, when she accompanied her husband to the residence of a relative, her husband come to her room along with Gurmail Singh, present petitioner, and despite her resistance, both of them committed wrong act with her. She confided in her parents-in-law as well as her parents, but as her husband apologized, she kept silent for the sake of her marriage and children. Now, again her husband has been harassing her for the last few days and forcing her to enter into a physical relationship with Gurmail Singh.

Counsel for the petitioner has argued that there is a matrimonial dispute between the prosecutrix and her husband and the petitioner, who is her husband's cousin, has been falsely embroiled in the criminal case. By referring to allegations levelled in FIR, Annexure P-1, and statement of the prosecutrix recorded under Section 164 of the Code, Annexure P-3, counsel urges that there is a contradiction regarding the date when the incident is alleged to have taken place. He submits that the prosecutrix declined to get herself medically examined. Referring to the testimony of the prosecutrix, Annexure A-1, counsel contends that she has not supported the case of the prosecution and has rather stated that she does not know any person by the name of Gurmail Singh. He asserts that the petitioner, who is 70 years of age, and is in confinement since 25.03.2022, deserves to be temporarily set free.

Per contra, State counsel has opposed the petition and has submitted that there are serious allegations against the petitioner in FIR, Annexure P-1, which have been duly supported by the prosecutrix in her statement recorded before the Magistrate. He, however, could not dispute the deposition of the prosecutrix. Upon instructions from SI, Jaspal Singh, he submits that 5 out of 12 prosecution witnesses, have been examined.

Having considered the submissions of the counsel for the parties, this Court is prima facie of the view that the involvement of the petitioner in the alleged crime would be debated before the Trial Court. The prosecutrix, who is the most material witness, has been examined. Noticing the age of the petitioner, length of custody and stage of trial, this Court is of the opinion that the petitioner deserves to be released from detention during the pendency of the trial.

Without advertng of the merits or demerits of the arguments addressed by counsel for the parties, petition is allowed. Petitioner is ordered to be released on bail during the pendency of trial, on furnishing adequate bail/surety bonds to the satisfaction of the Area Magistrate/Duty Magistrate concerned.

It is clarified that nothing said hereinabove shall be construed to be an expression of opinion on the merits of the case.

29.10.2022  
Pardeep

(SUVIR SEHGAL)  
JUDGE

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|---------------------------|-----|
| Whether Speaking/Reasoned | Yes |
| Whether Reportable        | Yes |