

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

220

CRM-M No.29921 of 2022
Date of decision:07.09.2022

Surender

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Rajesh Khandelwal, Advocate for the petitioner.

Ms. Deepshikha Chauhan, AAG, Haryana.

SUVIR SEHGAL J. (ORAL)

This is the second petition filed by the petitioner under Section 439 of the Code of Criminal Procedure, 1973, for grant of regular bail in case FIR No.25 dated 15.04.2021 registered under Sections 34, 342, 354-A (i), 365, 376-A (i), 452 and 506 of IPC, 1860; Sections 3 (2) (v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, (for short “SC/ST Act”), however, Sections 365, 342 and 376-A (1) of IPC have been deleted and Section 376 (1) of IPC and Section 04 of the Protection of Children from Sexual Offences Act, 2012, have been added later on at Women Police Station, Hansi.

FIR has been registered on the statement of a 20 year old girl (for short - “the prosecutrix”), who is a student of 10th class, on the allegation that around midnight on 28.03.2021, Surender (present petitioner) came to her house and took her to a liquor shop on his bike by threatening her and committed “wrong act” with her. When she managed to escape, Surender followed her and dropped her near a canal while

threatening to eliminate her in case she disclosed the incident to anybody.

Counsel for the petitioner submits that first petition preferred by the petitioner was dismissed by this Court vide order dated 24.11.2021, Annexure P-10, inter alia observing that the prosecutrix is yet to be examined. By referring to the testimony of the prosecutrix (witness No.4) and her mother (witness No.5), which has been appended as Annexures P-1 and P-2, respectively, counsel submits that both the material witnesses have denied the incident of sexual assault and have stated that the petitioner is not the accused. Counsel submits that in fact the physical relationship between the petitioner and the accused was consensual as is apparent from the CCTV recordings. It is his argument that no offence under the SC/ST Act is made out against the petitioner as there is no allegation of any objectionable utterance against him. Counsel submits that the petitioner, who is in custody since 25.04.2021, deserves to be enlarged on bail.

Per Contra, State counsel, upon instructions from PSI Kavita, has opposed the petition. She submits that the prosecutrix has specifically named the petitioner in the FIR as well as in the statement recorded under Section 164 of Cr.P.C. A reference has also been made by the State counsel to the history of the incident as recorded by the examining doctor in the MLR, Annexure P-6, to support her argument. State counsel, however, could not dispute the deposition of the prosecutrix. Still further, she submits that 06 out of 17 prosecution witnesses have been examined.

Having heard counsel for the parties, but without adverting to the merits or de-merits of the arguments addressed, this Court is *prima facie* of the view that complicity of the petitioner would remain a subject matter of debate before the trial court. The length of custody of the petitioner, the fact that material prosecution witnesses have been examined and that 11 more prosecution witnesses are yet to be stepped into the witness-box are other factors, which impel this Court to enlarge the petitioner on bail during the pendency of the trial.

Petition is allowed. Petitioner is ordered to be released on bail on furnishing bail/surety bonds to the satisfaction of the Trial Court/Duty Magistrate concerned.

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

07.09.2022

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(SUVIR SEHGAL)
JUDGE

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