

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

281

CRM-M-31146 of 2022
Date of decision:20.12.2022

Mohinder Sharma

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Ankur Sidhar, Advocate for
Mr. Rajesh Khandelwal, Advocate
for the petitioner.

Mr. Viney Phogat, DAG, Haryana.

SUVIR SEHGAL, J. (Oral)

Instant petition has been filed under Section 439 Cr.P.C., seeking grant of regular bail to the petitioner in case FIR No.551 dated 04.10.2021 registered under Sections 323, 34, 354-A, 376, 506 of Indian Penal Code, 1860, however, Section 325, IPC was added later on, at Police Station Hisar City.

Case of the prosecution is that FIR has been registered on the statement of a married lady stating that her marriage was solemnized in 2012 and she has two daughters from the wedlock. She stated that she is staying in three storeyed house. In the forenoon, on 02.12.2021, when she was cleaning the ground floor, Mohinder, present petitioner, who is a relative of her mother-in-law came, forcibly caught her and despite her resistance raped her. He threatened to eliminate her and her children. She

did not disclose the incident to anyone as her sister, who is married in the same family, was at an advanced stage of pregnancy. On 03.10.2021, Mohinder again tried to force himself, but she managed to flee and informed her husband, mother-in-law and other relatives, who did not believe her and accused her of defaming Mohinder. When she told her in-laws family that she will file a police complaint, they physically assaulted her. As she ran away from their clutches and went up to the third floor, they pushed her down from there and she fell unconscious. When she regained consciousness, she found herself in Civil Hospital, Hisar.

Counsel for the petitioner has argued that allegation of sexual assault against the petitioner is highly improbable as petitioner is 70 years of age. He submits that there is a variation and improvement in her version in her statement under Section 164 Cr.P.C and also in her testimony. By referring to the MLRs, Annexures P-3 and P-4, counsel submits that although the prosecutrix was medically examined at 10.00 a.m., on 04.10.2021, she did not inform the examining doctor about the alleged sexual assault. Rather in her second examination, which was conducted at 8.10 p.m on the same day, she alleged that she has been sexually assaulted. Counsel submits that testimony of the prosecutrix has been recorded and on an application moved by the prosecution, some additional accused have been summoned. He submits that the petitioner, who is in confinement since 12.10.2021, deserves to be enlarged on bail.

Opposing the petition, upon instructions from L/ASI Rakesh Rani, State counsel submits that there are serious allegations against the

petitioner, who has taken the advantage of the prosecutrix despite the fact that she is related to him. He submits that petitioner has been specifically named and as per the FSL report, semen has been dedected on the clothing of the prosecutrix. Still further, by referring to the MLR, he submits that prosecutrix has suffered injuries as she was pushed down from the third floor of the house.

Having considered the arguments addressed by counsel for the parties, this Court is *prima facie* of the view that involvement of the petitioner in the offence would be subject matter of debate before the Trial Court. Noticing the custody period of 14 months, advanced age of the petitioner as well as stage of the trial, this Court is inclined to accede to prayer made in the petition.

In view of the above, but without adverting to the arguments addressed by the counsel for the parties, 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

December 20, 2022

savita

(SUVIR SEHGAL)
JUDGE

Whether Speaking/Reasoned	Yes
Whether Reportable	Yes