

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

213

CRM-M No.38967 of 2022
Date of decision:14.10.2022

Ashwani Kumar @ Mani

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Gurmej Singh Bhinder, Advocate for
Mr. S.K. Choudhary, Advocate for the petitioner.

Mr. Mohit Chaudhary, AAG, Punjab.

SUVIR SEHGAL J. (ORAL)

This is the first petition filed by the petitioner under Section 439 of Cr.P.C. for grant of regular bail in case FIR No.108, dated 16.08.2020 registered for offence under Sections 363, 376 and 376-D of IPC, 1860, and Section 06 of the Protection of Children from Sexual Offences Act, 2012, at Police Station Taragarh, District Pathankot, Annexure P-1.

Case of the prosecution is that FIR, Annexure P-1, has been lodged on the statement of father of a minor girl (hereinafter referred to as “the prosecutrix”) on the allegation that the prosecutrix is missing from her parental home since morning of 14.08.2020. At about 08.45 PM, while he was searching for his daughter, Sandeep Saini, who was

riding a motorcycle, pushed her down from it and sped away. He has claimed that his daughter is deaf and dumb. She confided in her mother and narrated her ordeal.

Counsel for the petitioner has argued that the petitioner has not been named in the FIR and all the three material prosecution witnesses i.e. the prosecutrix and her parents, who have been examined, have not supported the case of the prosecution. He submits that the petitioner, who has a clean past and is in custody since 24.08.2022, deserves to be enlarged on bail. Reliance has been placed by him upon order dated 05.08.2022, Annexure P-5, whereby co-accused, Deepak Singh and Vishal, who according to the counsel are similarly placed, have been enlarged on bail.

Per Contra, State counsel, upon instructions from ASI Balvir Singh, has opposed the petition and has made a reference to the statement of the prosecutrix recorded under Section 164 of Cr.P.C. and has submitted that there are specific allegations against the accused, although she has not named the petitioner. He has submitted that the nature of allegations levelled against the petitioner are grave. As per his instructions, FSL report is inconclusive and 03 out of 26 prosecution witnesses have been examined.

Considering the submissions made by counsel for the parties, this Court is *prima facie* of the view that the culpability of the petitioner in the offence would be a subject matter of debate before the trial court. Petitioner, who is in custody for the last more than 25 months, would be entitled to be released on bail as all the material prosecution witnesses

have been examined and there is no possibility that the petitioner can influence them. Noticing that the trial is at an nascent stage and its conclusion is likely to take time, this Court is inclined to accept the prayer made in the petition.

Without advertng to the merits or de-merits of the arguments addressed by counsel for the parties, petition is allowed. Petitioner is ordered to be enlarged 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.

14.10.2022

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(SUVIR SEHGAL)
JUDGE

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