

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(105+228)

CRM-M-38880-2022 (O&M)-
Date of decision:- 12.12.2022

Jinder

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Ajay Pal Singh Rehan, Advocate
for the applicant-petitioner.

Mr. Ferry Sofat, Addl. A.G., Punjab
for State-respondent.

SUVIR SEHGAL, J. (ORAL)

CRM-47414-2022

Application is allowed as prayed for.

Testimony of the prosecutrix, her father-complainant and her mother, PW-1 to PW-3, are taken on record as Annexures P-9 to P-11, respectively.

CRM-31594-2022

Application is allowed as prayed for.

Main case

Instant petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 (for short "the Code") seeking grant of post-arrest bail in case FIR No.18 dated 06.02.2018, registered for offences under Sections 363 and 366-A of the Indian Penal Code, 1860 (for short "IPC"), however, later on Section 376, IPC and Section 4 of the Protection of Children from Sexual Offences Act, 2012 were added, at Police Station

Kanwan, District Pathankot (now Police Station Sujanpur, District Pathankot).

Counsel for the petitioner has argued that FIR has been registered by father of a seventeen year old school going girl (hereinafter referred to as “the prosecutrix”) on the allegation that on 25.01.2018, his daughter went out of the house, but did not return. Counsel urges that the complainant suspected Sunny of enticing her, but the petitioner was neither named in the FIR nor by the prosecutrix in her statement recorded upon her recovery. Reference has also been made by the counsel to the statement of the prosecutrix, recorded on 31.08.2018, Annexure P-3, under Section 164 of the Code to submit that the allegation levelled therein is against co-accused, Sunny and Soka @ Ashoka. Counsel submits that for the first time in her evidence before the Court, the prosecutrix has alleged that the petitioner along with co-accused forced her to have a cold drink, whereupon she became unconscious and was sexually assaulted. Counsel submits that the petitioner was summoned as an additional accused, but service was not effected upon him and he was declared as a proclaimed offender vide order dated 05.03.2022. It is his case that after the arrest of the petitioner on 08.08.2022, the prosecutrix and her parents have been examined, Annexures P-9 to P-11, and the version recorded by them is an improvement over the original stand taken by the prosecutrix. Counsel submits that the petitioner, who is the brother-in-law of the main accused, has been falsely implicated, but he has a clean past and deserves to be enlarged on bail. It is his submission that Sunny has been released on bail by this Court vide order dated 06.03.2020 passed in CRM-M-9039-2020.

Per contra, learned State counsel, upon instructions from ASI, Dharmpal, has opposed the petition and has submitted that the petitioner is accused of sexually assaulting a minor girl and despite having been summoned, deliberately did not join the proceedings. As per his instructions, three out of eighteen prosecution witnesses have been examined.

Having considered the submissions made by counsel for the parties, this Court is prima facie of the view that the complicity of the petitioner in the offence would remain a subject matter of debate before the Trial Court. Main accused, Sunny, has already been released on regular bail and the trial is likely to take time to conclude as fifteen more witnesses are to be examined.

While releasing the petitioner on bail, Trial Court shall impose any other condition it deems appropriate to obviate the possibility of future default by the petitioner.

Without adverting to the merits or demerits of the arguments addressed by counsel for the parties, petition is allowed. Petitioner is ordered to be released on bail 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.

(SUVIR SEHGAL)
JUDGE

12.12.2022

Kamal

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