

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(231)

CRM-M-41044-2022-

Date of decision:- 12.12.2022

Mohd. Sadik

... Petitioner

Versus

U.T. Chandigarh

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. D.V.Dhindsa, Advocate and
Mr. Kuldeep Singh, Advocate for the petitioner.

Mr. Anupam Bansal, Addl. P.P., U.T., Chandigarh
for U.T.-respondent.

SUVIR SEHGAL, J. (ORAL)

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.113 dated 18.09.2021, registered for offence under Section 363 of the Indian Penal Code, 1860 (for short “IPC”), however, later on Sections 366 and 376(2)(n), IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012 were added, at Police Station Mauli Jagran, Chandigarh.

Counsel for the petitioner submits that FIR has been registered on the statement of father of a seventeen year old girl (hereinafter referred to as

“the prosecutrix”) on the allegation that she is missing from her parental home. He urges that the petitioner has not been named in the FIR and in her statement recorded under Section 164 of the Code, Annexure P-1, she has stated that she left her parental home of her own free will and the petitioner did not force her, rather she forced him to accompany her. Counsel for the petitioner has also made a reference to the examination-in-chief of the prosecutrix, Annexure P-2, to contend that even though she is a minor, she has stated that they developed consensual physical relations. Counsel for the petitioner submits that the petitioner, who is in custody since 04.10.2021, deserves to be enlarged on bail as star prosecution witnesses have been examined.

Per contra, learned State counsel, upon instructions, has opposed the petition and has submitted that the petitioner is accused of sexually assaulting a minor and consent of a minor is immaterial. As per his instructions, seven out of thirty one witnesses have been examined and three witnesses have been given up.

Having considered the submissions made by counsel for the parties, but without adverting to the merits or demerits of the arguments addressed, this Court is prima facie of the view that the involvement of the petitioner in the offence would remain a subject matter of debate before the Trial Court. Petitioner, who is in custody for the last more than fourteen months, deserves to be enlarged on bail as the most material prosecution witness has been examined and the trial is likely to take time to conclude.

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