

IN THE HIGH COURT OF PUNJAB & HARYANA  
AT CHANDIGARH

202

CRM-M-41212 of 2022

Date of decision:21.10.2022

Subedeen @ Puchchu

... Petitioner

Vs.

State of Haryana

... Respondent

**CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL**

Present:- Mr. Prateek Rathee, Advocate  
for the petitioner.

Ms. Deepshikha Chauhan, AAG, Haryana.

**SUVIR SEHGAL J.**

This is the second petition filed under Section 439 of the Code of Criminal Procedure, 1973 (for short “the Code”) seeking grant of regular bail to the petitioner in FIR No.117 dated 12.05.2021 lodged for offences under Sections 376, 452 and 506 of Indian Penal Code, 1860 at Police Station Sadar Tauru, District Nuh (Annexure P-1).

Version of the prosecution is that FIR, Annexure P-1, has been registered on the complaint of a 14 year old girl (hereinafter referred to as “the prosecutrix”) on the allegation that at around 11.00 p.m., on 28.04.2021, when she and her family members were sleeping, accused Subedeen alias Puchchu, present petitioner and Nishar came to her room, gagged and raped her turn by turn. They threatened to circulate her video, which they had prepared, in case she informed her family members. Upon hearing commotion, her family members including father came, but the

accused fled away taking advantage of the dark. Despite the fact that accused have been pressurizing, they have not entered into a compromise with them.

By referring to the Medical Examination Report, Annexure P-2, counsel for the petitioner has contended that hymen of the prosecutrix was not found to have been ruptured and no semen was found on the vaginal slab. He submits that there is no evidence with the prosecution of forcible intercourse. He submits that there is an unexplained delay of 14 days in the registration of the FIR, though offence under Section 6 of the Protection of Children from Sexual Offences Act, 2012 (for short “the POCSO Act”) was initially invoked, yet after verifying the date of birth of the prosecutrix, offence under the POCSO Act was deleted. Counsel has made a reference to the affidavits dated 03.09.2021 and 01.09.2022, Annexures P-8 and P-11, respectively, executed by the prosecutrix to urge that she has stated that the petitioner has not sexually assaulted her. Reference has also been made by him to the deposition of the victim, Annexure P-12, to submit that the prosecutrix has not named the petitioner nor has she been able to identify him. Counsel submits that the first petition preferred by the petitioner was withdrawn prior to recording of deposition, Annexure P-12.

Per contra, State counsel submits that doctor, who had examined the prosecution, has opined in the medical report, Annexure P-2, that possibility of sexual assault cannot be ruled out. State counsel submits that because of time lag between the alleged incident and taking of samples, semen could not be detected on the slabs. Upon instructions from P/SI Sumit, she submits that petitioner has been named in the FIR, Annexure P-1,

as well as in the statement, Annexure P-3, under Section 164 of the Code and in the testimony of the prosecutrix recorded on 08.10.2021, Annexure P-9. She submits that after recording of the examination-in-chief of the prosecutrix, an application under Section 319 of the Code was submitted and Nishar was summoned as an additional accused. She submits that order summoning the co-accused, has been upheld by this Court in CRR No.1696-2021 on 02.03.2022 and thereafter, the trial started denovo and some of the crucial witnesses have not been examined so far.

I have considered the respective submissions of counsel for the parties.

Petitioner and co-accused, Nishar, who are cousins, are accused of a horrific incident and of intimidating the prosecutrix, who has levelled categoric allegations against the petitioner and co-accused in the FIR, which have been supported by her in the statement recorded before the Magistrate as well as in the testimony recorded on 08.10.2021, Annexure P-9. Even in the medical history, prosecutrix has narrated that she has been sexually assaulted during night hours on 28.04.2021.

In the deposition of the prosecutrix, Annexure P-12, recorded on 24.08.2022 after the appearance of the additional accused, the prosecutrix has stood by the allegations, though she has stated that the petitioner is not involved nor has she recognized him. Affidavits, Annexures P-8 and P-11 as well as testimony, Annexure P-12, have to be considered in the light of the attending circumstances as there are allegations against the accused of trying to pressurize her family to arrive at a settlement. As to whether affidavits and testimony, Annexure P-12 are voluntary and free from pressure or

coercion, are matters to be examined by the Trial Court. At this stage, this Court is of the opinion that the allegations against the petitioner, who is accused of having committed a heinous crime, are grave and the petitioner does not deserve the concession of regular bail as some of the material witnesses, who are family members of the prosecutrix, are yet to step into the witness box.

Petition being bereft of merit, is hereby dismissed.

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

October 21, 2022  
savita

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|---------------------------|-----|
| Whether Speaking/Reasoned | Yes |
| Whether Reportable        | Yes |