

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M No.47044 of 2021
Date of Decision : 09.02.2022

Sonu

....Petitioner

VERSUS

State of Haryana

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Sarfraj Hussain, Advocate for the petitioner.

Mr. Viney Phogat, DAG Haryana.

ALKA SARIN, J.

Heard through video conferencing.

This is the second petition under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to the petitioner in FIR No.0074 dated 01.04.2021 under Sections 354-D, 452, 506, 376, 511, 376-D and 354-A read with Section 34 of the Indian Penal Code, and Sections 4 and 12 of the Protection of Children from Sexual Offences Act, 2012 registered at Police Station Lakhan Majra, District Rohtak. The first petition for regular bail being CRM-M-20984-2021 was dismissed as withdrawn on 02.06.2021.

Learned counsel for the petitioner would contend that the petitioner has been falsely implicated in the case. He contended that as per the version in the FIR, on the night of 15.03.2021 at about 10.30 p.m., co-accused Naveen committed rape upon the prosecutrix. The only allegation against the petitioner is that on 31.03.2021 he along with co-accused, Rohit and Naveen, entered the house of the prosecutrix. However, co-accused Naveen, and not the petitioner, attempted to commit an unnatural act with the prosecutrix. In her statement, the prosecutrix has, however, stated that

the co-accused Naveen entered the house whereas Rohit and the petitioner remained outside the house and further that when co-accused Naveen attempted to commit rape upon her, she raised an alarm and on raising the alarm, co-accused, Rohit and Naveen managed to run away from the spot while the present petitioner was apprehended by the neighbourers. As per counsel, according to the custody certificate the petitioner was arrested on 03.04.2021. Learned counsel for the petitioner has further pointed to the cross-examination of the prosecutrix wherein she has stated that it is for the first time that she has seen Sonu (petitioner) in the Court. Counsel for the petitioner has argued that the petitioner was not involved in the incident of 15.03.2021. Even on 31.03.2021 the allegation against the petitioner is that he came to the house of the prosecutrix but remained outside.

Learned State counsel has filed a status report by way of affidavit of Sajjan Kumar, HPS, Deputy Superintendent of Police, Rohtak. State counsel has contended that the counsel for the petitioner has argued on points which are a matter of trial and not for bail. He contended that the FIR was lodged on 01.04.2021 in the evening and on 02.04.2021 the petitioner was arrested. Regarding the identification of the petitioner in Court by the prosecutrix the State counsel submitted that in the same statement the prosecutrix has stated that the petitioner was apprehended at the spot but she had also stated that the petitioner was allowed to go after convincing not to do any wrong in future. The prosecutrix had also stated that she had not seen the petitioner when he was apprehended by the co-villagers so identifying him in Court would not make any difference. Learned State counsel argued

that there is sufficient material available against the petitioner.

Heard counsel for the parties.

In the present case, it is the case of the prosecution that on 15.03.2021 the co-accused Naveen committed an unnatural act with the prosecutrix. The petitioner is not named in the incident of 15.03.2021. On 31.03.2021 it was the co-accused Naveen who entered the house whereas the petitioner remained outside the house.

In view on the above and without commenting upon the merits of the case and keeping in view the fact that the petitioner has been behind bars since 02.04.2021, I deem this to be a fit case to grant the concession of regular bail to the petitioner. The petitioner is directed to be released on bail subject to his furnishing bail bonds with heavy surety to the satisfaction of the Illaqa Magistrate/Duty Magistrate/Trial Court concerned.

However, the Prosecution will always be at liberty to apply for cancellation of bail in case the petitioner is found to be misusing the concession of bail in any manner.

It is also made clear that any observation made herein shall not be treated as an expression of opinion on the merits of the case.

Disposed off. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
JUDGE

9th February, 2022
jk

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO