

IN THE HIGH COURT OF PUNJAB & HARYANA AT  
CHANDIGARH

220

CRM-M No.45098 of 2022  
Date of decision:10.10.2022

Shahanbaj

... Petitioner

Vs.

State of Punjab

... Respondent

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

Present: Mr. Arvind Mittal, 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.65, dated 18.06.2022 registered for offence under Sections 376 and 452 of IPC, 1860, and Section 04 of the Protection of Children from Sexual Offences Act, 2012, at Police Station Kiratpur Sahib, District Rupnagar, Annexure P-1.

Case of the prosecution is that FIR, Annexure P-1, has been registered on the statement of a 16 year old girl (hereinafter referred to as “the prosecutrix”) on the allegation that on 15.06.2022 Shahanbaj (present petitioner) raped her, when she was alone at home. When she raised an alarm, he fled from the spot. Initially she did not disclose the

incident to her family members, but when her mother, who was out of town, came back, she confided in her.

Counsel for the petitioner submits that the petitioner was apprehended on the day the FIR was registered and is in custody since then. By referring to Annexure P-3, counsel for the petitioner submits that the prosecutrix declined to get herself medically examined and gave a signed statement, which is thumb marked by her mother and counter-signed by doctor on duty. It is his specific case that the incident as alleged in the FIR never took place and even in her statement recorded under Section 164 of Cr.P.C. on 19.06.2022, Annexure P-4, as well as in her testimony, Annexure P-2, when the prosecutrix has been examined as PW-1, she has stated that she has not been sexually assaulted. Counsel has also made a reference to the testimony of the complainant's mother to submit that both star witnesses have been declared as hostile. He submits that further incarceration of the petitioner would not serve any purpose.

Per Contra, State counsel, upon instructions from ASI Ram Kumar, has opposed the petition and has submitted that the petitioner is specifically named in the FIR and there are serious allegations against him. He, however, could not dispute the fact that both the crucial witnesses have not supported the case of the prosecution.

Having considered the submissions made by counsel for the parties, but without advertng to the merits or de-merits of the arguments addressed, this Court is *prima facie* of the view that the complicity of the petitioner in the crime would remain a subject matter of debate before the trial court. Considering that material prosecution witnesses have been

examined, trial is likely to take time to conclude and petitioner is in custody for more than three months, this Court is of the opinion that he is entitled to be released on bail during the pendency of the trial.

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.

10.10.2022

*sheetal*

(SUVIR SEHGAL)

JUDGE

|                           |        |
|---------------------------|--------|
| Whether Speaking/Reasoned | Yes/No |
| Whether Reportable        | Yes/No |