

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CRM-M-50916-2021

Date of Decision: 02.02.2022

Gurtej Singh and anotherPetitioners

Versus

State of Punjab..... Respondent

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

...
(through video conferencing)

Present: Mr. Darshan Singh Malwai, Advocate
for the petitioners.

Mr. Luvinder Sofat, AAG, Punjab.

...

MANJARI NEHRU KAUL, J. (Oral)

Instant petition has been filed under Section 439 Cr.P.C, for grant of regular bail to the petitioners in case FIR No.30 dated 18.03.2021 under Sections 376-D IPC, and Section 4 of POCSO Act, later on changed to Section 6 of POCSO Act and added Section 3(2)(v) of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act,1989 registered at Police Station Barnala, District Barnala.

At the outset, while inviting the attention of this Court to the FIR(Annexure P-1), learned counsel for the petitioners submits that the version put-forth therein is at complete variance with the deposition of the prosecutrix when she stepped into the witness box as PW-1. In support, he has taken this Court through the deposition of the prosecutrix wherein indeed she has given an altogether different version qua the alleged rape committed upon her. He further submits that the prosecutrix, thus, failed to

hostile during trial. It is submitted that similarly situated co-accused had been extended the concession of bail by this court vide order dated 17.12.2021 passed in CRM-M-51792-2021. A prayer, therefore, has been made to extend the concession of bail to the petitioners as they have been in custody since 22.04.2021 and their further incarceration in the aforementioned circumstances would not serve any useful purpose.

Per contra, learned State counsel while opposing the prayer made by counsel opposite has not been able to controvert the submissions made by counsel opposite qua a totally contrary version given by the prosecutrix, while stepping into the witness box as PW-1 viz-a-viz in her initial version given at the time of registering of the FIR. He, on instructions from ASI Tarsem Singh, has conceded that the prosecutrix is the sole material witness in the case in hand.

Heard learned counsel for the parties and perused the material available including the deposition of the prosecutrix on record.

In the facts and circumstances of the case as enumerated hereinabove, since the sole material witness i.e. prosecutrix already stands examined and the trial will take considerable time to conclude, instant petition is allowed. The petitioners be admitted to bail to the satisfaction of the trial Court/Duty Magistrate concerned. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

02.02.2022
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(MANJARI NEHRU KAUL)
JUDGE

Note: Whether speaking/reasoned
Whether Reportable:

Yes / No
Yes / No

