

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

218

CRM-M-52765 of 2021
Date of decision:14.02.2022

Manwar

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. G.S.Sawhney, Advocate
for the petitioner.

Ms. Deepshikha Chauhan, AAG, Haryana.

SUVIR SEHGAL, J. (Oral)

Heard through video conferencing.

Instant petition has been filed under Section 439 Cr.P.C seeking grant of regular bail to the petitioner in case FIR No.96 dated 14.04.2020 registered under Sections 376, 506 of Indian Penal Code, 1860 and Section 4 of Protection of Children from Sexual Offences Act, 2012 (for short "POCSO Act") at Police Station Israna, District Panipat (Annexure P-1).

FIR (Annexure P-1) has been registered on the statement of the prosecutrix on the allegation that she lives with her husband at a brick kiln. At 2.30 a.m in the morning, when her husband had gone to switch on the tubewell, Manwar (present petitioner), who lives in the same premises,

gagged her, forcibly took her to other side of the brick kiln and raped her. On hearing commotion, her husband came running and she disclosed everything to him.

Counsel for the petitioner contends that though the prosecution has invoked the provisions of POSCO Act, but the prosecutrix is not a minor because while recording her statement under Section 164 Cr.P.C, she has disclosed her age as 18 years and during her medical examination, which is appended as Annexure R-2, she mentions her age as 19 years. He submits that a perusal of the MLR shows that no external injury has been suffered by her. Still further, it is his star argument that both the prosecutrix and her husband, who have been examined as PW1 and PW2 have not supported the case of the prosecution and have been declared as hostile. He submits that the petitioner, who is in custody since 14.04.2020, deserves to be released on bail as his further detention will not serve any purpose.

Per contra, State counsel, upon instructions from P/SI Romi Gill and by making a reference to the status report filed by way of an affidavit of Deputy Superintendent of Police, Crime Against Women, Panipat, which is taken on record, has opposed the petition on the ground that there are categoric and specific allegations of sexual assault against the petitioner in the FIR, which are duly supported by the prosecutrix in the statement recorded before the Magistrate. She submits that the FSL result is positive and DNA report is awaited. As per her instructions, 02 out of total 14 prosecution witnesses, have been examined.

Having considered the circumstances of the case, the Court is of the view that involvement of the petitioner in the crime would remain debatable. The petitioner, who is in custody for the last one year and eight months would be entitled to be released on bail as statement of material prosecution witnesses has been recorded and the trial is likely to take time to conclude.

Without delving into the merits or demerits of the arguments addressed by counsel for the parties, the petition is allowed and the petitioner is ordered to be released 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.

February 14, 2022
savita

(SUVIR SEHGAL)
JUDGE

<i>Whether Speaking/Reasoned</i>	<i>Yes</i>
<i>Whether Reportable</i>	<i>Yes</i>