

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

(207)

CRM-M-1354-2023

Date of decision:- 23.02.2023

Sartaj Ahmad

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Abhishek Sethi, Advocate
for the petitioner.

Mr. Rohit Bansal, Senior DAG, Punjab
for State-respondent.

SUVIR SEHGAL, J. (ORAL)

This is the third petition filed under Section 439 of the Code of Criminal Procedure, 1973 (for short “the Code”) seeking grant of post-arrest bail in case FIR No.43 dated 24.02.2021, registered for offence under Section 376 of the Indian Penal Code, 1860 and Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012, at Police Station City Gurdaspur, District Gurdaspur, Annexure P-1.

Case of the prosecution is that FIR, Annexure P-1, has been registered when a telephonic call was received from a thirteen year old girl (for short “the prosecutrix”) that she has been physically assaulted by her maternal aunt and uncle. She was medically examined and found pregnant.

Counsel for the petitioner has contended that petitioner is not named in the FIR. By referring in depth to the evidence of the prosecutrix and other material witnesses, he has submitted that there are major inconsistencies and that the prosecutrix had been tutored.

Per contra, learned State counsel, upon instructions received from ASI, Jaswant Singh, has opposed the petition and submits that there is sufficient evidence to show that the petitioner is guilty of sexually assaulting the prosecutrix. He submits that seven out of nineteen prosecution witnesses have been examined and there is no change in circumstances to enable the petitioner to file a fresh petition.

I have heard counsel for the parties.

An innocent teenage girl has been physically and sexually assaulted. In her statement under Section 164, Cr.P.C, Annexure P-8, prosecutrix has named the petitioner as the predator. She has supported the allegations in her testimony. The deposition of her mother is also on the same lines. Mere non-mentioning of the name of the petitioner in the FIR pales into insignificance in the light of clinching evidence on the record. Minor inconsistencies in the cross-examination of a fourteen year old girl is of no consequence as it has been settled that the testimony of the prosecutrix is not to be placed on the same pedestal as that of an injured witness. Hon'ble Supreme Court in ***The State of Punjab Versus Gurmit Singh and others, (1996) 2 SCC 384*** has held that the deposition of a prosecutrix if it is reliable, trustworthy and of a sterling quality, deserves to be given full credence.

Besides the custody, counsel for the petitioner has not been able to show any change in circumstance after the earlier two petitions were

withdrawn.

Noticing the severity of accusation against the petitioner and the age of the prosecutrix, this Court is not inclined to exercise its discretionary power to grant relief to the petitioner.

Petition is dismissed.

It is clarified that nothing said hereinabove shall be construed to be an expression of opinion on the merits of the case and the Trial Court shall conclude the trial uninfluenced by any observation made hereinabove.

(SUVIR SEHGAL)
JUDGE

23.02.2023
Kamal

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No