

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(218)

CRM-M-3696-2023
Date of decision:- 18.08.2023

Anchal Kumar ... Petitioner
Versus
State of Punjab ... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Amandeep Singh Manaise, Advocate
for the petitioner.

Mr. A.P.S.Tung, DAG, Punjab.
for State-respondent.

SUVIR SEHGAL, J. (ORAL)

1. This is the second petition filed under Section 439 Cr.P.C.
seeking grant of post-arrest bail in:-

FIR No.	Dated	Police Station	Sections
76	04.05.2021	Sujanpur, District Pathankot	376, 506, 269, 188, IPC, Section 51 of the Disaster Management Act, 2005 and Section 3 of the Epidemic Diseases Act, 1897

2. Case of the prosecution is that FIR, Annexure P-1, has been registered on the statement of a 29 year old lady (for short “the prosecutrix”), wherein she has stated that due to a discord with her husband, she was staying at her maternal village. Anchal Kumar, present petitioner, was known to her. On the fateful day at about 04:30 A.M, he came to her room, gagged her with a *dupatta* and sexually assaulted her.

When her minor children started crying, her neighbour, Sheela, wife of Nek Ram, came on hearing the commotion and Anchal Kumar fled, snatching her mobile and threatening her. Prosecutrix confided in her mother and then reported incident to the police.

3. The star argument raised by the counsel on behalf of the petitioner is that physical relationship with the prosecutrix was consensual and she levelled allegation of sexual assault after they were caught in an intimate act. By making a reference to the testimony of the prosecutrix, her mother and neighbour, who have been examined as PW-1, PW-2 and PW-5, respectively, counsel urges that all the three material prosecution witnesses have not supported the case of the prosecution. He argues that none of the three witnesses have named the petitioner as the accused and rather the stand of the said witnesses is that the offence has been committed by an unidentified person with a covered face. Counsel submits that after the withdrawal of the previous petition in April, 2022, the neighbour of the prosecutrix has been examined on 11.04.2023 and no other crucial witness is to be examined by the prosecution. He asserts that the petitioner, who is in custody since 16.06.2021 and has a clean past, deserves to be released on bail.

4. *Per contra*, State counsel, upon instructions received from ASI, Jagdish Singh, while opposing the petition, has contended that the allegation against the petitioner is serious and grave. He has argued that the prosecutrix has supported the allegation in her statement under Section 164, Cr.P.C. He has also made a reference to the MLR of the prosecutrix and has

submitted that the DNA profiling has matched with that of petitioner. Upon further instructions, he submits that six out of twenty two prosecution witnesses have been examined.

5. I have heard counsel for the parties and considered their respective submissions.

6. Whether the relationship between the petitioner and the prosecutrix was consensual, is a matter, which will be adjudicated by the Trial Court on the basis of evidence adduced before it. Noticing that all the vital prosecution witnesses have been examined, length of custody of more than twenty six months and the stage of the trial, this Court is of the view that the petitioner deserves to be enlarged on bail.

7. Without adverting to the merits or demerits of the arguments addressed by counsel for the parties, petition is allowed. Petitioner is ordered to be released on bail on furnishing adequate bail/surety bonds to the satisfaction of the Area Magistrate/Duty Magistrate/Trial Court concerned.

8. It is clarified that nothing said hereinabove shall be construed to be an expression of opinion on the merits of the case.

(SUVIR SEHGAL)
JUDGE

18.08.2023

Kamal

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