

IN THE HIGH COURT OF PUNJAB & HARYANA

AT CHANDIGARH

208

CRM-M-18814 of 2023

Date of decision:24.04.2023

Kamal

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Pranshul Dhull, Advocate
for the petitioner.

Mr. Harish Nain, AAG, Haryana.

SUVIR SEHGAL, J. (Oral)

1. This is the second petition filed under Section 439 of the Code of Criminal Procedure, 1973 (for short “the Code”), seeking grant of regular bail to the petitioner in case bearing FIR (Annexure P-1):-

FIR No.	Dated	Police Station	Section
277	29.07.2021	Women Police Station, City Sohna, District Gurugram, Haryana	6 of Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as “the POCSO Act”), 363, 366-A, 323, 120-B IPC

2. On the statement of father of a 17 year old girl, (for short “the minor prosecutrix”), FIR (Annexure P-1) has been registered, wherein, he has stated that in the morning, he received information that his daughter was missing from school. When his daughter came home in the evening, she

revealed that two boys, 'A' (name withheld as he is a juvenile) and Kamal (present petitioner), who live in the neighbourhood, took her with them on the pretext that her father was calling her. As they were known to her, she went with them on a motorcycle, but they took her to a deserted room and 'A' sexually exploited her, while Kamal stood outside. Thereafter, they dropped her near her residence.

3. Counsel for the petitioner has contended that the petitioner has been falsely implicated and there is neither any allegation against him in the FIR nor in the statement recorded under Section 164 of the Code. He submits that as vital prosecution witnesses have been examined, petitioner deserves to be enlarged on bail.

4. Per contra, State counsel has opposed the petition by urging that the allegations against the petitioner are serious and grave. He submits that minor prosecutrix has supported the version in the evidence recorded before the Trial Court.

5. I have considered the respective submissions of counsel for the parties.

6. While rejecting the previous bail petition filed by the petitioner, this Court observed as under:-

“The minor prosecutrix is 17 years of age. Co-accused 'A', who is a juvenile and is on bail, along with petitioner mislead her and took her to an abandoned room where she has been sexually assaulted. The version as recorded in the FIR has

been duly supported by the minor prosecutrix and in the statement recorded under Section 164 of the Code, Annexure P-2, as well as in her testimony, Annexure P-3. In her deposition before the Court, the prosecutrix has stated that after 'A' went out of the room, present petitioner came inside and 'ravished' her. When she raised an alarm, both the accused dropped her to a place near her home.

Though the exact role of the petitioner would be subject of trial but his probable complicity in a heinous crime involving a minor is apparent from the accusation as well as the material relied upon by the State. Considering the nature of allegations levelled, gravity of offence allegedly committed by him and severity of punishment likely to be imposed in case he is convicted, this Court does not deem it appropriate to order his release on bail during the pendency of the trial."

7. It is apparent from the above that there are specific allegations against the petitioner of accompanying the co-accused, taking advantage of the minor prosecutrix and sexually exploiting her. The allegation stands established from the testimony of the minor prosecutrix. Besides the custody, counsel for the petitioner has not been able to bring forth any material to show that there has been any change in the circumstances after the previous bail petition was declined by this Court. Filing of subsequent bail petition amounts to seeking review of the previous order, which is not permissible in criminal law as has been laid by the Hon'ble Supreme Court

in **Hari Singh Mann Vs. Harbhajan Singh Bajwa (2001) 1 SCC 169;**
State of Madhya Pradesh Vs. Kajad, 2001 SCC (Criminal) 1520 and
State of Maharashtra Vs. Buddhikota Subha Rao 1989 Suppl. (2) SCC
605.

8. In view of the above, there is no merit in the petition, which is hereby dismissed.

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

April 24, 2023
savita

(SUVIR SEHGAL)
JUDGE

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