

CRM-M-23842-2023
Date of decision: 17.05.2023

...Petitioner

V/s

...Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Vishal Sharda, Advocate
for the petitioner.

Mr. Chetan Sharma, DAG, Haryana.

MANJARI NEHRU KAUL J. (ORAL)

1. The petitioner is seeking the concession of bail under Section 439 Cr.P.C. in case FIR No.0002 dated 15.01.2021 under Sections 376(3), 506, 354-D, 354 IPC and 4 of The Protection of Children from Sexual Offence Act, 2012 and 3(1)(w) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Amendment 2015) registered at Police Station Women Police Station, Dabwali, Sirsa.
2. Custody certificate has been filed by the respondent-State and the same is taken on record.
3. Learned counsel for the petitioner *inter alia* contends that a perusal of the FIR which has been annexed as Annexure P-1 leaves no manner of doubt that the prosecutrix/victim, who was approximately 16 years of age on the date of the alleged occurrence, was a consenting party.

Learned counsel further submits that sequence of events leaves no manner of

doubt that the allegations levelled in the FIR did not even reflect that it was on account of any fear that the prosecutrix/victim had accompanied the petitioner, who had thereafter, left her alone in the fields before disappearing. Learned counsel still further submits that the petitioner has now been in custody since 20.01.2021 and prosecution evidence has not yet concluded as only 11 out of 20 prosecution witnesses cited, have been examined. Learned counsel further submits that as all the material witnesses, including the prosecutrix/victim stand examined, further incarceration of the petitioner would serve no useful purpose.

4. Per contra, learned State counsel, while opposing the prayer and submissions made by learned counsel for the petitioner, has submitted that even assuming that the prosecutrix/victim was a consenting party, her consent would be of no avail as she was admittedly a minor on the fateful date when she was lured away by the petitioner and taken to the fields, where, her person was then violated. He has, however, not been able to dispute that all the three material witnesses including the victim stand examined. Learned State counsel further submits that the next date of hearing before the trial Court is 28.08.2023, when some more prosecution witnesses are likely to be examined.

On a pointed query put to the learned State counsel qua the antecedents of the petitioner, he submits that the petitioner has clean antecedents and is not involved in any other criminal case.

5. I have heard learned counsel for the parties and perused the material placed on record.

6. In the facts and circumstances as enumerated hereinabove since all the material witnesses stand examined and 09 prosecution witnesses still remain to be examined coupled with the fact that the petitioner has been in custody for more than 02 years having been arrested on 20.01.2021, this Court deems it fit to grant the concession of regular bail to the petitioner. The present petition is allowed and the petitioner 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.

17.05.2023
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(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No