

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

204

CRM-M-37088-2022

Date of decision:19.01.2023

Mohit

...Petitioner

Vs.

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. G.P.S. Ghuman, Advocate and
Mr. Shivraj Daumajra, Advocate for the petitioner.

Mr. Saurabh Mohunta, DAG, Haryana.

SUVIR SEHGAL J. (ORAL)

This is the second petition filed by the petitioner under Section 439 of Cr.P.C. for grant of regular bail in case FIR No.248, dated 14.06.2021 registered for the offences under Section 25 of the Arms Act, 1959, Sections 120-B, 323, 370, 376-D and 506 of IPC, (however, Sections 3, 4, 5, 6, 7 of Immoral Traffic (Prevention) Act; Sections 370-A and 376 of IPC were added later on, and Section 25, Arms Act and Section 376-D, IPC were deleted) at Police Station Sadar Thanesar, Kurukshetra, District Kurukshetra.

Case of the prosecution is that the above mentioned FIR has been registered on the complaint of a 21 year old married lady (hereinafter referred to as “the prosecutrix”) on the allegation that her sister-in-law and her boyfriend-Happy, convinced her into going with them on a trip. She fell into their trap and in the early morning of

02.06.2021, when her mother-in-law was sleeping, her sister-in-law stole some money and they went to Jalandhar, where Happy was already present. Later, Happy took them to a brothel at Ambala and kept them in two rooms. Threatening the prosecutrix with a country made pistol, he raped her. He also called some boys, who sexually assaulted her from 03.06.2021 to 13.06.2021. She managed to escape with her sister-in-law on 13.06.2021 and reached Kurukshetra. They stayed in a hotel from where she called her husband, who brought her home.

Counsel for the petitioner has contended that the petitioner is neither named in the FIR nor any role has been ascribed to him. He submits that the only incriminating material against the petitioner, is an electronic banking transaction of Rs.800/-, which has allegedly been paid to the prosecutrix. Counsel submits that in fact that amount was paid to an employee, who returned it a few days later. Still further, by referring to the testimony of the prosecutrix, who has been examined as PW-1, counsel submits that she has been declared hostile and the petitioner, who is a young man of 25 years of age with clean antecedents and is in custody since 15.07.2021, deserves to be enlarged on bail. Counsel submits that the first petition filed by the petitioner (CRM-M-52032-2021) was withdrawn vide order dated 01.06.2022 on an application moved by the petitioner without addressing arguments.

Per Contra, learned State counsel, upon instructions from ASI Rajni, has opposed the petition and has submitted that the petitioner is accused of a heinous offence. As per the State counsel, petitioner is one of the boys, who paid Happy and sexually exploited the prosecutrix.

State counsel could not deny that the prosecutrix has not supported the case of the prosecution. Still further, upon instructions, he submits that 07 out of 21 prosecution witnesses have been examined.

Having considered the submissions made by counsel for the parties, but without advertng to the merits or de-merits of the arguments addressed, this Court is *prima facie* of the view that the complicity of the petitioner remains a subject matter of adjudication before the trial court. Noticing the length of custody of the petitioner, which by now is more than 18 months and the fact that the material prosecution witnesses have been examined, this Court is inclined to accept the prayer made in the petition.

Petition is allowed. 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.

19.01.2023

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(SUVIR SEHGAL)
JUDGE

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