

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

205

CRM-M-40690-2022

Date of decision: 13.02.2023

Jakir

...Petitioner

Versus

State of Haryana

...Respondents

CORAM: HON'BLE MR.JUSTICE SUVIR SEHGAL

Present: Mr. Ashish Gupta, Advocate
for the petitioner.

Mr. Saurabh Mohunta, DAG, Haryana.

SUVIR SEHGAL, J. (Oral)

This is the second petition filed under Section 439, Cr.P.C., seeking grant of regular bail in FIR No. 126 dated 21.03.2020, registered for offences under Sections 365, 376D, 506 IPC, 1860 at Police Station Ferozepur Jhirka, District Nuh.

The case of the prosecution is that FIR has been registered on the statement of mother of a 19 year old prosecutrix on the allegation that when her daughter had gone to fetch water, 4-5 persons abducted her and took her to a lonely place where they raped her. They left her in an unconscious condition on a road from where the police recovered her.

Counsel for the petitioner contends that although the petitioner has been named as one of the accused in the FIR, but in her statement under Section 164 Cr.P.C., the prosecutrix has not named any accused. He has made a reference to the evidence of the examining doctor to argue that no external injury marks were seen on the body of prosecutrix. Still further, he submits that the prosecutrix who is the most crucial prosecution witness, has been examined and she has deposed that the petitioner did not sexually assault her and her mother has also deposed on the same lines. He submits that the previous petition preferred by the petitioner was withdrawn on 25.02.2022 and,

thereafter, the material prosecution witnesses have been examined who have been declared hostile and in view of the change in circumstances, present petition is maintainable.

Per contra, learned State counsel upon instructions from ASI-Pushpa has opposed the petition and has submitted that the petitioner is accused of a serious offence and has been specifically named in the FIR. As per instructions received by him, prosecution has to examine 14 prosecution witnesses out of which the star witnesses has been examined.

Having heard counsel for the parties and without adverting to the merits or demerits of the arguments addressed, this Court is prima facie of the view that the culpability of the petitioner in the crime would remain a subject matter of debate before the trial Court. Petitioner who is in confinement for the last more than 24 months would be entitled to be released on bail as the trial is likely to take time and the material witnesses stand examined.

In view of the above facts and circumstances, petition is allowed. Petitioner is ordered to be released on bail on furnishing adequate bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate concerned.

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

13.02.2023
Harish Kumar

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No