

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****224****CRM-M No.42203 of 2023****Date of Decision : 07.12.2023**

Sombir

....Petitioner

VERSUS

State of Haryana

....Respondent

**CORAM : HON'BLE MRS. JUSTICE ALKA SARIN**

Present : Mr. Sankalp Gehlawat, Advocate for  
Mr. Kamal Mor, Advocate for the petitioner.

Ms. Priyanka Sadar, AAG Haryana.

**ALKA SARIN, J. (Oral)**

1. The present petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to the petitioner in FIR No.703 dated 16.08.2022 under Sections 376(2)(n) and 506 of the Indian Penal Code, 1860 and Section 6 of the Protection of Children from Sexual Offences Act, 2012 registered at Police Station Azad Nagar, District Hisar.

2. The FIR was lodged on the statement of the prosecutrix alleging therein that in March 2022, co-accused, Sunil, and Sombir (petitioner herein) came to her house on the pretext of asking about her father and at that time she was alone at home. After one day Sunil (co-accused) came to her house and forcibly put a cloth in her mouth and committed a wrong act with her. She did not disclose to anyone as Sunil had threatened that he would kill her parents and brother. Next day Sombir (petitioner herein) came to her house

while she was alone at home. He also committed a wrong act with her and threatened that he would kill her. Hence, she did not share the same with anyone. She was under fear. About 5-6 days prior to lodging of the present FIR on 16.08.2022, she felt pain in her stomach. When she was taken to a doctor it was discovered that she was pregnant. It was further alleged that co-accused, Sunil, and Sombir (petitioner herein) had committed wrong act with her and she had become pregnant. Accordingly, the present FIR was registered.

3. Learned counsel for the petitioner would contend that the material witnesses i.e. the prosecutrix and her father have both turned hostile. Learned counsel for the petitioner would further contend that the petitioner has been in custody for a period of 01 year 02 months and 26 days.

4. Learned State counsel has filed the custody certificate as per which the petitioner has been in custody for a period of 01 year 02 months and 26 days. DNA Report has also been handed over in Court in which it has been stated that DNA profile of the child does not match with that of the petitioner and the co-accused.

5. I have heard learned counsel for the parties.

6. In the present case the FIR was registered on the statement of the prosecutrix alleging therein that she had been raped by the petitioner and the co-accused. She supported the case in her statement recorded under Section 164 CrPC. However, during her deposition before the Court she was declared hostile. Her father was also declared hostile by the prosecution. The DNA Report has since been received as per which the DNA profile of the child delivered by the prosecutrix does not match with that of the petitioner

herein and the co-accused. The petitioner has been in custody for a period of 01 year 02 months and 26 days and that the conclusion of trial is likely to take some time.

7. In view of the above and without commenting upon the merits of the case, I deem it to be a fit case to grant the concession of regular bail to the petitioner. The petitioner is directed to be released on bail subject to his furnishing bail bonds/surety bonds to the satisfaction of the Trial Court/Additional Sessions Judge (Duty) concerned.

8. However, the Prosecution will always be at liberty to apply for cancellation of bail in case the petitioner is found to be misusing the concession of bail in any manner.

9. It is also made clear that any observation made herein shall not be treated as an expression of opinion on the merits of the case.

10. Disposed off. Pending applications, if any, also stand disposed off.

**( ALKA SARIN )**  
**JUDGE**

07.12.2023  
jk

NOTE: Whether speaking/non-speaking: Speaking  
Whether reportable: YES/NO