

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

102+205

CRM-M-44742 of 2022 (O&M)
Date of decision:10.05.2023

Ajay Kachura

Vs.

... Petitioner

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. N.S.Sodhi, Advocate
for the petitioner.

Mr. Rohit Bansal, Sr. DAG, Punjab.

Mr. Chahit Bansal, Advocate for
Mr. Pardhuman Garg, Advocate
for the complainant.

SUVIR SEHGAL, J. (Oral)

CRM No.19218 of 2023

Application is allowed as prayed for.

Annexures P-4 to P-6 are taken on record.

CRM-M-44742-2022

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 in case bearing FIR (Annexure P-1):-

FIR No.	Dated	Police Station	Sections
33	02.04.2021	Arniwala, District Fazilka	363, 366-A IPC, however, Sections 376 IPC and 6 of Protection of Children from Sexual Offences Act, 2012 were added later on.

2. Version of the prosecution is that FIR (Annexure P-1) has been registered on the statement of father of a 17 year old girl, who is a student of senior secondary. He stated that in the forenoon, on 31.03.2021, his daughter left for school to enquire about her roll number and after considerable lapse of time, when she did not return, he sent his brother, Rakesh Kumar to the school to enquire about her. However, he came back and informed him that his daughter is not in the school. Despite attempts, she could not be located. An allegation has been levelled that Ajay Kachura (present petitioner) was seen talking to her and has enticed her in connivance with his parents with the intention to get married to her.

3. Counsel for the petitioner has argued that the petitioner is employed in the Army and was having an affair with the prosecutrix. By referring to the photographs (Annexure P-6), he asserts that the petitioner and prosecutrix solemnized their marriage in a Gurudwara Sahib. He submits that the petitioner has been falsely implicated by the prosecutrix at the behest of her parents as they are against the relationship. Still further, it is his argument that story set up by the prosecution is highly improbable as lockdown restrictions were in force in March, 2021.

4. Per contra, upon instructions from ASI Gurnam Singh, State counsel has opposed the petition and has submitted that the prosecutrix has supported the accusation. In particular, he has made a reference to her testimony (Annexure P-4), wherein, she stated that the petitioner took her to a Paying Guest accommodation at Mohali where he committed penetrative sexual assault upon her. State counsel submits that the parties never married

and no marriage certificate has been produced by the petitioner. Upon further instructions, he submits that 06 out of total 20 prosecution witnesses have been examined. He submits that there is no change in the circumstances after the first petition filed by the petitioner was dismissed in January, 2022.

5. I have considered the submissions made by counsel for the parties.

6. There are serious and grave allegations against the petitioner of having sexually exploited the prosecutrix by taking advantage of the trust and faith reposed by her. Prosecutrix has supported the allegations in her statement recorded under Section 164 of the Code as well as in her testimony. She has stood firm on the accusation despite the fact that she has been extensively cross-examined. Trial Court is yet to consider the evidence to determine the guilt or innocence of the accused, therefore, this Court, at this stage would refrain itself from making any comment on the material, produced before the Trial Court. Previous petition moved by the petitioner for grant of regular bail was withdrawn from this Court, after arguments, in the month of January, 2022. Filing of subsequent petition amounts to seeking review of the previous judgment, which is not permissible in criminal law as has been held 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. Capt.Buddhikota Subha Rao 1989 Supl. (2) SCC 605.**

7. Keeping in view the totality of the facts and facets, nature of allegations against the petitioner and the evidence led before the Trial Court,

this Court is not inclined to extend the concession of bail to the petitioner.

8. Petition is dismissed.
9. It is clarified that nothing said hereinabove shall be construed to be an expression of opinion on the merits of the case and the Trial Court shall proceed to conclude the trial as expeditiously as possible, on the basis of evidence led before it.

May 10, 2023
savita

(SUVIR SEHGAL)
JUDGE

<i>Whether Speaking/Reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>