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IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(202) CRM-M-50033-2022
Date of decision:- 11.04.2023

Sunny Dayal ... Petitioner
Versus
State of Haryana ... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Gurveer Singh Sidhu, Advocate for the petitioner.

Mr. Saurabh Mohunta, DAG, Haryana for the State-respondent.

SUVIR SEHGAL, J. (ORAL)

This is the second petition filed under Section 439 of the Code of Criminal Procedure, 1973 (for short “the Code”) seeking grant of post-arrest bail in:-

FIR No.	Dated	Police Station	Sections
144	19.04.2020	Ladwa, District Kurukshetra	323, 376 and 506 of IPC and Section 3 (1) (XII) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Section 452, IPC was added later on)

Version of the prosecution is that FIR, Annexure P-1, has been registered on the complaint of a twenty five year old lady (for short hereinafter referred to as “the prosecutrix”) on the allegation that she came in contact with Sunny Dayal, present petitioner, when she was working at a shop at Ladwa. Petitioner, who is also a shopkeeper, used to regularly come to make purchases. He allured her on the pretext of securing her a

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government job, and took her mobile number. About ten days before the lodging of the complaint, he called her to his shop where he sexually assaulted her and made casteist remarks. On 15.04.2020, he came to her house and threatened her and her parents, whereupon she withdrew the complaint submitted against him.

Counsel for the petitioner has argued that the relationship between the petitioner and the prosecutrix was consensual and story of sexual assault at petitioner's shop is highly improbable because due to lockdown in March/April, 2020, all the commercial establishments were closed. He submits that the petitioner possesses a number of photographs of the prosecutrix with him, which she has admitted during cross-examination. Still further, he submits that the prosecutrix wanted to marry the petitioner and when the relationship turned sour, she lodged the FIR, Annexure P-1. Counsel submits that after the withdrawal of the previous petition seeking bail, the doctor, who conducted the MLR, has been examined and her cross-examination supports the version of the petitioner. Counsel submits that as the material prosecution witnesses have been examined and the petitioner, who has a clean past and is languishing behind bars since 22.04.2020, he deserves to be enlarged on bail.

Opposing the petition, State counsel, upon instructions received from W/SI, Kamlesh, submits that there are serious and grave allegations against the petitioner of taking advantage of a young girl. He submits that the prosecutrix has supported the allegations in her statement under Section 164 of the Code and her deposition. As per his instructions, seven out of twenty five prosecution witnesses have been examined.

Having heard counsel for the parties, this Court is prima facie of the view that the nature of relationship between the parties would be determined by the Trial Court during the course of the trial. Petitioner, who is in confinement for the last more than thirty five months, would be entitled to be released on bail as vital prosecution witnesses have been examined and there is not a likelihood of an early conclusion of the trial.

Without adverting to the merits or demerits of the arguments addressed by counsel for the parties, petition is allowed. Petitioner is ordered to be released on bail on furnishing adequate bail/surety bonds to the satisfaction of the Area Magistrate/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

11.04.2023
Kamal

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