

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

235

CRM-M-53755-2023 (O&M)

Date of Decision : 09.11.2023

SUKHWINDER SINGH @ LAKHA

.... Petitioner

VERSUS

STATE OF PUNJAB

.... Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. T.S. Grewal, Advocate for the petitioner.

Mr. Harjinder Singh Sidhu, AAG Punjab.

ALKA SARIN, J. (ORAL)

1. The present third 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.167 dated 20.10.2022 under Sections 376(2)(n), 328, 346, 344, 120-B of the Indian Penal Code, 1860 registered at Police Station City-I, Sangrur, District Sangrur. The earlier two petitions were dismissed as withdrawn vide orders dated 10.01.2023 and 11.10.2023.

2. Learned counsel for the petitioner would contend that the petitioner has falsely been implicated in the present case and that though the incident is alleged to have taken place on 27.08.2022 the FIR was lodged on 20.10.2022. The medical in the present case was conducted on 09.11.2022. Learned counsel would further contend that the petitioner was neither named in the FIR nor in the statement of the victim/complainant recorded under Section 164 CrPC and that for the first time the name of the petitioner had

surfaced was in the supplementary statement of the victim/complainant recorded on 23.10.2022. Learned counsel would further contend that the DNA Report also does not support the case of the prosecution qua the petitioner. It is further the contention of the learned counsel for the petitioner that there are variances in the allegations made in the FIR, in the statement of the victim/complainant recorded under Section 164 CrPC and in her supplementary statement. Learned counsel would still further contend that in her statement now recorded before the Court below as PW-1, the victim has exonerated the present petitioner.

3. Learned counsel for the State has filed the custody certificate and as per the custody certificate the petitioner has been in custody for a period of 11 months and 21 days. Learned counsel is not in a position to deny the fact that the petitioner was initially not named in the FIR and in the statement of the victim/complainant recorded under Section 164 CrPC. Learned counsel is also not in a position to deny the fact that the DNA Report does not match with the DNA profile of the petitioner. Learned counsel would contend that as per the DNA report the petitioner is not a biological father of the baby.

4. Heard.

5. In the present case, the incident is alleged to have taken place on 27.08.2022 and the FIR was lodged on 20.10.2022. The medical was conducted on 09.11.2022. The petitioner was neither named in the FIR nor in the statement of the victim/complainant recorded under Section 164 CrPC. It is in the supplementary statement of the victim/complainant

recorded on 23.10.2022 that the name of the petitioner has surfaced for the first time. The DNA profile of the child does not match with that of the petitioner and it has been opined that the petitioner is not a biological father of the child. In the statement of the victim recorded before the Court below as PW-1 the petitioner stands exonerated. The petitioner has been in custody for a period of 11 months and 21 days. The trial is likely to take some time to conclude and no useful purpose would be served by keeping the petitioner behind the bars any further.

6. In view of the above and without commenting upon the merits of the case, this Court deems 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, if not required in some other case.

7. 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.

8. 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.

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

09.11.2023
Aman Jain

(ALKA SARIN)
JUDGE

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