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

CRM-M No.22689 of 2020 (O&M)

Date of decision: 22.03.2021

Shubham Kumar

....Petitioner

Versus

State of Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. B.S. Seemar, Advocate
for the petitioner.

Mr. Joginder Pal Ratra, DAG, Punjab.

ARVIND SINGH SANGWAN J. (Oral)

CRM-8898-2021

Heard.

Allowed as prayed for.

Documents (Annexures P5 to P7) are taken on record
subject to all just exceptions.

CRM-M No.22689 of 2020 (O&M)

Prayer in this petition is for grant of regular bail to the petitioner under Section 439 of the Code of Criminal Procedure (in short 'Cr.P.C.') in FIR No.03 dated 12.01.2020, for offence punishable under Sections 363, 366-A of the Indian Penal Code, 1860 (in short 'IPC') (Sections 376-D IPC and 6 of the POCSO Act, added later vide DDR No.48 dated 18.01.2020) registered at Police Station City Division No.7, District Police Commissionerate, Jalandhar.

Counsel for the petitioner has submitted that as per the allegations in the FIR, registered at the instance of the sister of the

prosecutrix, it is stated that the prosecutrix has been kidnapped and the FIR was registered and later on, when she was recovered, the police recorded her statement in which she has given name of Raman, Mandeep @ Deep, the petitioner and 02 other persons. It is further stated that while appearing as PW1, the victim has identified the co-accused Raman with the allegation that on 09.01.2020, she left her house where Raman met her with whom she was already having acquaintance. Raman took her to a P.G. where he called his friend Mandeep @ Deep and both of them committed rape on her, without her consent. Later on, the other 02 persons also came there and they also committed rape upon her. When she as asked to identify the accused persons, she identified Mandeep @ Deep as a person, who was wearing a turban and further stated that Ramandeep Singh is not the person present in the Court and the second person, who was shown to her, she stated that he was not known to her and he never committed rape upon her. On this the Public Prosecutor requested the Court to declare the prosecutrix as hostile as she was not identifying the accused persons. The said request was allowed and when the Public Prosecutor cross-examined her, it is stated that it is wrong to suggest that the accused present in the Court is the same person shown to her through video conferencing and she is intentionally not identifying him. In further cross-examination, she stated that it is neither a fact nor she stated in her statement that the accused Shubham Kumar, Rajinder @ Rinku and Jagjeet Singh @ Bhullar, have committed rape upon her.

Similar is the statement made by the complainant, who appeared as PW-2 and stated that she do not know anything about the

investigation except registration of the FIR that her sister has been kidnapped. Even, PW-3 Harjinder Pal Singh, who is the father of the victim has only stated about Raman that he has allured his daughter for marriage and established physical relations with her forcibly.

Counsel for the petitioner has further argued that the petitioner is in custody since 31.01.2020 and since all the material witnesses have already been examined, there is no possibility for the petitioner to tamper with the prosecution evidence.

Counsel for the State on the basis of the Custody Certificate and the affidavit of the Investigating Officer has, however, submitted that the victim recorded her statement under Section 164 Cr.P.C. and she was also medico legally examined and therefore, the petitioner was arrested on the allegation of committing gang rape.

A report from the trial Court was sought regarding all the statements of the prosecutrix, the complainant and the father of the prosecutrix and the trial Court has submitted a report that the statements have been recorded.

The statements of all the 03 witnesses have been placed on record by counsel for the petitioner.

Without commenting anything on merits of the case, considering the fact that the petitioner is in custody for the last 01 year, 01 month and 18 days; the prosecutrix has not supported the prosecution version and she has been declared hostile; the petitioner is not involved in any other case; the custodial interrogation of the petitioner is not required and the conclusion of the trial will take some time due to COVID-19 situation, this petition is allowed and the

petitioner is directed to be released on bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Illaqa Magistrate/Duty Magistrate.

However, it will be open for the prosecution to apply for cancellation of bail of the petitioner, in case he is found involved in any other case or misusing the concession of bail, in any manner.

(ARVIND SINGH SANGWAN)
JUDGE

22.03.2021
yakub

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No