

CRM-M-31110-2020 (O&M)

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

**CRM-M-31110-2020 (O&M).
Decided on: February 8, 2021.**

Gurvinder Singh Gagan @ Kala

.. Petitioner

VERSUS

State of Punjab

.. Respondent

*** * ***

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

*** * ***

**PRESENT Mr.Kuldeep Singh Saini, Advocate,
for the petitioner.**

Mr.Luvinder Sofat, AAG, Punjab.

JASGURPREET SINGH PURI, J. (ORAL)

The present petition has been filed under Section 439 of the Code of Criminal Procedure, seeking regular bail in FIR No.49 dated 22.7.2019, under Sections 363, 366-A, 376 (3) IPC and under Section 4 of the POCSO Act, registered at Police Station Morinda, District Ropar.

Reply by way of affidavit of Mr.Ravinder Pal Singh, DSP, Sri Chamkaur Sahib, has been filed by the State, which is taken on record. Custody certificate filed by the State is also taken on record.

Learned counsel for the petitioner has submitted that the petitioner has been falsely involved in the present FIR which has been

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registered against him at the instance of father of the prosecutrix stating that the petitioner had allured the prosecutrix on the pretext of marriage and that the prosecutrix was minor. Thereafter, the matter was investigated by the police and challan stands presented in the Court. He has further submitted that the petitioner and the prosecutrix are first cousin, the prosecutrix being his maternal aunt's daughter and there was no occasion for the petitioner to commit such act. He has further submitted that it was due to enmity between family members that the petitioner has been roped up in the present case. He has further submitted that although the prosecutrix made statement under Section 164 Cr.P.C. which was against the petitioner but at the time of her examination-in-chief in the Court, she initially supported the prosecution version which was deferred as the statement of the prosecutrix under Section 164 Cr.P.C. was not available with the trial Court but later on during further examination-in-chief, the prosecutrix turned hostile vide Annexure P-3.

The learned counsel for the petitioner has submitted that the petitioner is in custody since 22.7.2019 which is more than 1½ years and the investigation in the present case is complete and rather all the material witnesses have been examined and therefore, he has prayed for the grant of regular bail to the petitioner.

On the other hand, learned State counsel has submitted that it is correct that the petitioner is in custody since 22.7.2019 i.e. for the last 1½ years and after framing of charges, out of total 14 cited witnesses, 7 prosecution witnesses have already been examined including the prosecutrix

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and her father and only the official witnesses are left. However, learned State counsel has opposed the grant of regular bail on the ground that the matter is serious in nature.

I have heard the learned counsel for the parties.

Admittedly, the investigation in the present case is complete and after framing of charges, material prosecution witnesses including the prosecutrix and her father have already been examined and the prosecutrix turned hostile during her deferred examination-in-chief. As per the State only official witnesses remain to be examined and as per the custody certificate there is no other case against the petitioner apart from the present case. Furthermore, it is not the case of the State that in case the petitioner is released on bail then he may influence any witness or may tamper with any evidence.

Therefore, considering the totality of the circumstances of the present case, this Court deems it fit and proper to allow the present petition. It is ordered that the petitioner shall be released on bail on furnishing bail bond/surety bond to the satisfaction of the concerned trial Court/Duty Magistrate.

However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is meant only for the purpose of decision of present petition.

February 8, 2021.
raj arora

JASGURPREET SINGH PURI)
JUDGE

Whether speaking / reasoned
Whether reportable

Yes / No
Yes / No