

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

219

CRM-M-265-2023

Date of Decision: 12.04.2023

Harpreet Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. J.K. Singla, Advocate for the petitioner

Mr. Shiva Khurmi, AAG, Punjab
(assisted by ASI Jasvir Singh)

JAGMOHAN BANSAL, J. (ORAL)

1. The petitioner, through instant petition under Section 439 of Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') is seeking regular bail in FIR No.43 dated 25.02.2022 under Sections 365, 376-D, 379-B, 506 & 34 of Indian Penal Code, 1860 (for short 'IPC') (Section 201 of IPC added later on vide DDR No.08 dated 08.08.2022) registered at Police Station City-2 Mansa, District Mansa.

2. The case of the prosecution is that prosecutrix lodged a complaint alleging that she has two sons aged 25 years and 22 years. Her husband died 5 years back. On 22.02.2022 at 11:00 AM, she was going to meet her friend. Two persons came on a motorcycle and started stalking her. They disclosed their identity as Harpreet Singh son of Mal

Singh and Harjinder Singh son of Mal Singh, residents of Bathinda. They made her sit on the motorcycle and took her away from Mansa to canal at village Bhaini Bagha. They gang raped her and took away her gold ornaments.

3. Learned counsel for the petitioner, *inter alia* contends that there are material contradictions in the FIR and statement recorded under Section 164 Cr.P.C. The prosecutrix stands examined and she has turned hostile. The petitioner and co-accused are real brothers, thus, it is highly improbable that they committed gang rape. The petitioner is in custody since 10.05.2022. The petitioner has been wrongly implicated in the commission of alleged offence. The petitioner is permanent resident of District Bathinda. There is no possibility of flee from justice.

4. Custody certificate dated 11.04.2023 is taken on record. As per custody certificate, the petitioner is in custody since 11.05.2022. He is involved in 3 more cases and he is on bail in all the cases.

5. Learned State Counsel submits that police report has already been filed and charges stand framed. He further submits that there are 16 witnesses and only one witness i.e. prosecutrix has been examined. The petitioner is involved in the commission of grave offence, thus, no leniency is warranted and release of petitioner would hamper the trial.

6. In the case in hand, the prosecutrix has already been examined and she has turned hostile. Primarily there are contradictions in the FIR and statement recorded under Section 164 Cr.P.C. The Trial Court yet has to return definite findings on the disputed issues. There are 16 prosecution witnesses and till date only prosecutrix has been examined, thus, there is abysmally low possibility of conclusion of trial in near future. The petitioner is in custody since 10.05.2022. As prosecution has right to arrest, investigate the matter and restrain an accused from manipulating or winning over witnesses, similarly accused in view of Article 21 of the Constitution of India has right to defend himself and put forth his stand which cannot be possible while in custody. The prosecution has not led any convincing/plausible documentary or oral evidence indicating possibility of petitioner being flee from justice or tampering the evidences or winning over/threatening the witnesses;

7. In view of afore-stated facts and circumstances, this Court is of the considered opinion that present petition deserves to be allowed and accordingly allowed. The petitioner is ordered to be released on bail subject to conditions as may be imposed by Trial Court/Illaq/Duty Magistrate concerned.

8. Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and Trial Court shall proceed without being prejudiced by observations of this Court.

(JAGMOHAN BANSAL)
JUDGE

12.04.2023
Mohit Kumar

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>