

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

214

CRM-M-981-2023

Date of Decision: 11.04.2023

Kuldeep Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Sukhjit Singh, Advocate for the petitioner

Mr. Amish Sharma, AAG, Punjab
(assisted by ASI Shinder Pal)

JAGMOHAN BANSAL, J. (ORAL)

1. The petitioner, through instant petition under Section 439 Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), is seeking regular bail in FIR No.0056 dated 28.10.2022 under Sections 354 & 506 of Indian Penal Code, 1860 (for short 'IPC') and Sections 8 & 12 of Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act') registered at Police Station Morinda, District Ropar.

2. The case of the prosecution is that on 27.10.2022 at about 05:20 PM, the daughter of complainant who is aged about 15 years had gone to buy vegetable *pakora* from grocery shop of the village but she came without buying the same and complained to her mother that petitioner-Kuldeep Singh was standing near the house of Patheriwala

which is having no gate. He dragged her to a wheat straw fodder room. He removed his trouser as well underwear. He ran away as soon as she started crying loudly.

3. Learned counsel for the petitioner, *inter alia* contends that petitioner had lodged complaint with police at 112 prior to registration of FIR against Sarpanch of the village and at the behest of Sarpanch, FIR has been registered against the petitioner. As per CCTV footage, the petitioner was not at the place of alleged incident. The maximum sentence prescribed for the commission of alleged offence is 5 years and petitioner is in custody since 31.10.2022. The petitioner is a 56 years old man having three children. The petitioner is not involved in any other offence. The petitioner has been wrongly implicated in the commission of alleged offence. The petitioner is permanent resident of District Roopnagar. The petitioner has deep roots in the society. There is no possibility of flee from justice.

4. Custody certificate dated 08.04.2023 is taken on record. As per custody certificate, the petitioner is in custody since 30.10.2022 and he is not involved in any other offence.

5. Status report by way of affidavit dated 10.04.2023 of Navneet Singh Mahal, P.P.S., Superintendent of Police, Morinda, District Roopnagar filed on behalf of respondent-State is taken on record. Registry is directed to tag the same at appropriate place.

6. Learned State Counsel submits that police report has already been filed and charges are yet to be framed. There are 14 prosecution witnesses and none has been examined. The CCTV footage submitted by petitioner is not supporting case of the petitioner. The petitioner is involved in the commission of grave offence, thus, no leniency is warranted and release of petitioner would hamper the trial.

7. In the case in hand, from the reply of the State, the questions of presence of petitioner at the place of alleged incident and lodging of complaint by petitioner at 112 against Sapranh of the village become debatable and these issues are yet to be adjudicated by the Trial Court. The maximum sentence prescribed for commission of alleged offence is 5 years and petitioner is in custody for more than 5 months. The petitioner is not involved in any other offence. There are 14 prosecution witnesses, thus, conclusion of trial will certainly take some time. 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.

8. 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/Illaqa/Duty Magistrate concerned.

9. 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

11.04.2023
Mohit Kumar

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