

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

102+215

CRM-M-2516-2022 (O&M)

Date of Decision: 28.03.2023

Anil

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Manoj Tanwar, Advocate for the petitioner

Ms. Dimple Jain, AAG, Haryana
(assisted by SHO Dharmali Devi)

JAGMOHAN BANSAL, J. (ORAL)**CRM-13610-2023**

Application for placing on record deposition of victim PW-12 (Annexure P-3) is allowed. The same is taken on record subject to just exceptions. Registry is directed to tag the same at appropriate place.

CRM stands disposed of.

CRM-M-2516-2022

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.69 dated 18.09.2021 under Sections 341, 354-D, 506, 376(2)(n), 201 of Indian Penal Code, 1860 (for short 'IPC'); Section 67-A of Information Technology Act, 2000, Section 6 of

Protection of Children from Sexual Offences Act, 2012 and Section 3(2)(v) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989.

2. The case of the prosecution is that prosecutrix lodged a complaint alleging that in December 2018, she was studying in Xth standard in Government School at village Dhanasri. Sachin was her classmate who along with Anil used to harass her on her way to school. They forced her to establish physical relations with them. One day Sachin and Anil came on their bike and forced her to accompany them. They forcibly took her away in fields and committed rape upon her. They took her photographs and prepared obscene video. They threatened her to upload her obscene vide on internet. Due to fear and shame, she did not reveal anything to anyone. They established physical relations with her on several occasions.

3. Learned counsel for the petitioner, *inter alia* contends that petitioner has been falsely implicated. The prosecutrix lodged FIR in 18.09.2021 whereas she is alleging that alleged incident took place in December' 2018. The prosecutrix had alleged that Anil and Sachin committed rape and made video. The police during the course of investigation did not find substance in the allegations of prosecutrix qua Sachin and challan was presented only against present petitioner-Anil. He is a student of Engineering and he is in custody since 21.09.2021. The prosecutrix at the time of lodging complaint was married. The

investigating officer has not recovered any video whereas prosecutrix was repeatedly alleging making of video. The prosecutrix stands examined. The prosecutrix was not minor still provisions of Protection of Children from Sexual Offences Act, 2012 have been invoked. There is no medical evidence and entire case of prosecution is based upon statement of the prosecutrix which was made after 3 years from the date of alleged incident. 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 Charkhi Dadri. The petitioner has deep roots in the society. There is no possibility of flee from justice.

4. Learned State counsel, on instructions from SHO Dharmali Devi, submits that there are 25 prosecution witnesses and 23 stand examined. The petitioner is involved in the commission of grave offence, thus, no leniency is warranted and release of petitioner would hamper the trial.

5. In the case in hand, FIR came to be registered after 3 years from the date of alleged incident. The prosecutrix had made same allegations against two boys whereas police has found one boy totally innocent. The prosecutrix was a married lady at the time of alleged incident. The petitioner is in custody since 22.09.2021 and he is not involved in any other offence. There is no medical evidence and entire case of prosecution is based upon statement of the prosecutrix which was

made after 3 years from the date of alleged incident. The Trial Court yet has to return definite findings on the disputed issues. 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.

6. 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.

7. 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

28.03.2023
Mohit Kumar

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