

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

225

CRM-M-3370-2023

Date of Decision: 10.03.2023

Parhlad

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Punit Malik, Advocate for the petitioner

Ms. Dimple Jain, AAG, Haryana

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.135 dated 15.06.2021 under Sections 346 of Indian Penal Code, 1860 (for short 'IPC') [Section 346 of IPC was deleted and Section 6 of Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act') was added later on] registered at Police Station Sushant Lok, Gurugram.

2. The case of the prosecution is that on 15.06.2021, father of the prosecutrix moved a written complaint alleging that he hails from District Chhatrpur (Madhya Pradesh) and presently, he is residing at Gurugram. He is a mason and blessed with one son and three daughters. His second daughter aged 18 years is missing. He had searched the victim but is unable to trace her out. On 18.06.2021, victim along with

her parents came to police station. Statements of the prosecutrix under Section 161 and 164 Cr.P.C. were recorded.

3. Learned counsel for the petitioner, *inter alia* contends that prosecutrix at the time of alleged incident was more than 18 years which is evident from the contents of FIR as well as examination-in-chief of the prosecutrix and her father. The prosecutrix and her father have been declared hostile. The petitioner has performed marriage with prosecutrix and she is legally wedded wife of the petitioner. The FIR was registered at the behest of parents of the prosecutrix because they were against the marriage. The petitioner is in custody since 19.06.2021 and is not involved in any other offence. The petitioner has been wrongly implicated in the commission of alleged offence. There is no possibility of flee from justice.

4. Custody certificate dated 26.01.2023 is taken on record. Registry is directed to tag the same at appropriate place.

5. Learned State Counsel submits that prosecutrix got pregnant from the petitioner and she has given birth to a baby girl. At the time of alleged incident, she was a minor. As per DNA profile, the petitioner is the biological father of the child. She further submits that out of 21 witnesses, 9 witnesses have already been examined which includes the prosecutrix and complainant. 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 and complainant in their examination-in-chief have declared age of the prosecutrix more than 18 years. Even in the FIR, the age of prosecutrix is stated to be 18 years. The prosecutrix and complainant stand turned hostile. They have miserably spoiled case of the prosecution. The petitioner is in custody since 19.06.2021 and he is not disputing the factum of marriage as well as parental of the child. There are 21 prosecution witnesses and till date only 9 witnesses have been examined, thus, there is abysmally low possibility of conclusion of trial in near future. The material witness i.e. prosecutrix and complainant stand examined. 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 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.

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

10.03.2023
Mohit Kumar

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