

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

214+2

CRM-M-4577-2021

Date of Decision: 08.02.2023

Ravi Parkash

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. S.S. Momi, Advocate for the petitioner

Ms. Dimple Jain, AAG, Haryana

Mr. Sachin Rai Vaid, Advocate for complainant

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner, through instant petition under Section 439 Cr.P.C., is seeking regular bail in FIR No.55 dated 30.01.2020 under Sections 365 of IPC (Section 6 of POCSO Act, Sections 328, 343, 366A, 370, 370A, 375, 376, 120-B of IPC and Sections 3, 4, 5, 6, 7 of Immoral Traffic Act added later on) registered at Police Station Sadar Thanesar, District Kurukshetra.

2. The case of the prosecution is that father of the prosecutrix on 30.01.2020 lodged complaint with the police alleging that his daughter aged 13 years has gone missing from their house on 27.01.2020. The prosecutrix was recovered on 19.05.2020 and thereafter statements of prosecutrix and her father were recorded on 19.05.2020. The police recorded multiple statements of the prosecutrix under Section

161 Cr.P.C. The prosecutrix in her subsequent statements disclosed name of different persons. The prosecutrix in her statement dated 29.11.2021 before the Trial Court disclosed that Bintu, Nixon and Manoj @ Manish put her in the car and took her away to a liquor shop near village Jhirbar. Nixon and Bintu committed rape with her and thereafter they took her away her to Lucky Dhaba. The owner of Lucky Dhaba, namely, Ashok and his servant Bir Kumar telephonically called Kajal. Ashok took her away on motorcycle and dropped near fly over Pipli from where Kajal and Ravi took her away to Makanda Kheri. Kajal and Ravi used to take away her to hotels and used to force her to have sexual intercourse with customers. In the hotel, owner of the hotel and his servant Sandeep committed rape with her. One day she escaped from house of Kajal and reached bus stand where Sonu Khan met her. Sonu Khan took away her to Ganesh Colony and raped her. Sonu Khan thereafter took away her to a rented accommodation where owner of the house asked for Aadhaar Card. She disclosed owner of the house that Sonu had brought her forcefully. The owner of the house called police.

3. Learned counsel for the petitioner, *inter alia* contends that the petitioner was arrested on the basis of statement of co-accused Dinesh Kumar. The police recorded various statements of Kajal/co-accused and petitioner has been demonstrated as an associate of Kajal whereas neither Kajal disclosed name of the petitioner nor the prosecutrix in her statement under Section 164 Cr.P.C. There is no

allegation of commission of offence of rape against the petitioner still he is in custody since 23.07.2020. There was allegation of use of motorcycle which was never recovered. The petitioner being a poor person has been blindly implicated. He 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 Kurukshetra. This Court has already granted concession of regular bail to two co-accused. There is no possibility of flee from justice.

4. Learned State Counsel submits that police report has already been filed and charges stand framed. She further submits that out of 56 witnesses, 18 have already been examined which include prosecutrix. The prosecutrix was 13 years old, thus, it was not possible for her to identify each and every accused at the threshold. The petitioner was associate of Kajal and prosecutrix has identified him at the time of her examination before trial court. The petitioner is involved in the commission of grave offence, thus, no leniency is warranted and release of petitioner would hamper the trial.

5. Learned counsel for the complainant has opposed the bail application on the score that the victim was aged about 12 years and 10 months at the time of occurrence. Her father is working as a labourer. She was illegally detained and subjected to prostitution for a long period of 3½ months. It cannot be expected from the victim that she would have remembered the names of each and every person who had sexually

abused her during that period of time. The proceedings in the trial Court are going at a fair pace. The petitioner was associate of Kajal who is main culprit.

6. A two judge Bench of Hon'ble Supreme Court in ***Satender Kumar Antil v. CBI; (2022) 10 SCC 51***, with respect to prevailing conditions of undertrial prisoner in India has observed:

“6. Jails in India are flooded with undertrial prisoners. The statistics placed before us would indicate that more than 2/3rd of the inmates of the prisons constitute undertrial prisoners. Of this category of prisoners, majority may not even be required to be arrested despite registration of a cognizable offence, being charged with offences punishable for seven years or less. They are not only poor and illiterate but also would include women. Thus, there is a culture of offence being inherited by many of them. As observed by this Court, it certainly exhibits the mindset, a vestige of colonial India, on the part of the investigating agency, notwithstanding the fact arrest is a draconian measure resulting in curtailment of liberty, and thus to be used sparingly. In a democracy, there can never be an impression that it is a police State as both are conceptually opposite to each other.”

7. Intent of arrest and reason of denial of bail is to:

- i) Secure the appearance of the accused at the time of trial;

- ii) allay possibility of repeating of offence & jeopardising own life on account of grim prospect of being convicted; and
- iii) Avoid possibility of tampering of evidence and security of witnesses who may be pressurised or maltreated.

8. A person who seeks to be liberated must take judgment and serve sentence in the event of his conviction. The nature of the crime charged, severity of punishment prescribed, *prime facie* available evidences, history & background of the accused may indicate that any amount of bond and surety is not going to secure presence of accused, at the time of conviction. Detention or arrest not only deprives a person from his fundamental right of personal liberty guaranteed by Article 21 but also freedom guaranteed by Article 19(1) of our Constitution.

9. In the case in hand, anticipatory bail granted to co-accused- Manish alias Manoj was cancelled by Hon'ble Supreme Court vide order dated 06.05.2022 and thereafter, he was arrested. He has been granted concession of regular bail by this Court vide order dated 07.12.2022 passed in CRM-M-29853-2022. Similarly, Dimple Goel, owner of the hotel who is also a co-accused has been granted concession of regular bail vide order dated 17.12.2020 passed by this Court in CRM-M-36489-2020. The petitioner is in custody since 23.07.2020 and he is not involved in any other offence. There are 56 prosecution witnesses and till

date only 18 witnesses have been examined, thus, there is abysmally low possibility of conclusion of trial in near future. The material witness i.e. prosecutrix stands examined. The petitioner is alleged to be an associate of Kajal whereas she in her disclosure statement has not named the petitioner. The prosecutrix in her statement under Section 164 and thereafter in statements under Section 161 did not implicate the petitioner. The petitioner was arrested on the basis of statement of co-accused Dinesh and that too after the expiry of two months from the date of arrest of Kajal. 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 tempering the evidences or winning over/threatening the witnesses.

10. 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/Illaq/Duty Magistrate concerned.

11. 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

08.02.2023
Mohit Kumar

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