

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

218

CRM-M-4276-2023
Date of Decision: 10.04.2023

Sudiq Mohammad

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Vicky Sharma, Advocate for
Mr. Fatehjeet Singh, Advocate for the petitioner
Mr. Amish Sharma, AAG, Punjab
(assisted by ASI Ravinder Singh)

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.54 dated 29.08.2022 under Sections 376, 506 & 509 of Indian Penal Code, 1860 (for short 'IPC') and Section 67 of Information Technology Act, 2000 registered at Police Station Bholath, District Kapurthala.
2. The case of the prosecution is that complainant lodged a complaint with Police Station Bholath alleging that she got married with Gurmit Singh about 12 years back and is blessed with 3 children. Her husband is living in America for last 8 years. The petitioner used to come to her house for repair of water tank. He had her mobile number. He

started calling her and visited her house frequently. He attended her son's birthday on 22.11.2021 and came to her home after 2-3 days while she was alone at home. He forcibly made physical relations with her. He prepared her obscene video which was made viral.

3. Learned counsel for the petitioner, *inter alia* contends that petitioner and prosecutrix had consensual relation. The prosecutrix is mother of three children, thus, she is quite mature to understand the consequences of physical relations. The FIR was registered on 29.08.2022 whereas as per FIR, the alleged incident took place in November' 2021. The petitioner is a Water Tank Mechanic. The petitioner is in custody since 02.09.2022 and 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 Kapurthala. There is no possibility of flee from justice.

4. Learned State counsel, on instructions from ASI Ravinder Singh, submits that police report has already been filed and charges stand framed. He further submits that there are 13 witnesses and none 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.

5. In the case in hand, the prosecutrix is a married lady having three children. She is quite mature to understand consequences of her act

and conduct. As per petitioner, there was consensual relation. The petitioner is in custody since 02.09.2022 and he is not involved in any other offence, as confirmed by learned State counsel. The Trial Court yet has to return definite findings on the disputed issue i.e. consent of the prosecutrix. There are 13 prosecution witnesses and till date none has been examined which indicates interest of the prosecution to pursue the matter. The petitioner is a Water Tank Mechanic, thus, it cannot be expected that he had influenced the prosecution to withhold examination of witnesses. The petitioner cannot be kept behind the bars for indefinite period. 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

10.04.2023
Mohit Kumar

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