

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

209

CRM-M-6854-2023

Date of Decision: 01.05.2023

**Gagandeep Singh @ Gagan****...Petitioner****Versus****State of Punjab and Another****...Respondents****CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL**

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

Mr. Shiva Khurmi, AAG, Punjab

Mr. Vikas Gupta, Advocate for respondent No.2

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**JAGMOHAN BANSAL, J. (ORAL)**

1. The petitioner through instant petition under Section 439 of Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') is seeking concession of regular bail in FIR No.193 dated 06.07.2020 under Sections 302, 328, 203 & 34 of Indian Penal Code, 1860 and Section 376-D of IPC & Section 6 of Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act') registered at Police Station Sultanpur Lodhi, District Kapurthala.

2. The case of the prosecution is that complainant lodged an FIR against three persons alleging that they have murdered his niece. One accused was father of the deceased, another was step-mother of the deceased and third was sister of step-mother. In the FIR, it was alleged that all three persons in connivance with each other have killed the deceased. After quite some time, the investigating agency received one

chemical report disclosing presence of human semen near the body of the deceased. The police recorded supplementary statement of respondent No.2 i.e. elder sister of the deceased. In her statement, she made allegations against petitioner and step-brother of the deceased. The petitioner and step-brother of the deceased were arrested and they are facing trial. The investigating agency during investigation found sister of step-mother of the deceased innocent, however, she was summoned under Section 319 Cr.P.C and this Court vide order dated 10.04.2023 passed in CRR-892-2023 has stayed the trial.

3. Learned counsel for the petitioner, *inter alia* contends that petitioner has been implicated after more than 2 years from the date of alleged incident. He was implicated on the sole statement of the sister of the deceased who has furnished affidavit disclosing that under pressure of relatives, she had named the petitioner. The petitioner has no concern with the death of the deceased. He had never stayed with her. There is no medical evidence against him and he has been mechanically implicated and thereafter arrested. The petitioner is in custody since 26.04.2022 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. The petitioner has deep roots in the society. There is no possibility of flee from justice.

4. Learned counsel for the respondent No.2 confirms contents of affidavit dated 21.12.2022 (Annexure P-1) and submits that he has no objection if petitioner is released on bail.

5. Status report by way of affidavit dated 27.03.2023 of Sukhwinder Singh, P.P.S., Deputy Superintendent of Police, Sub-Division, Sultanpur, Kapurthala filed on behalf of respondent-State is taken on record. Registry is directed to tag the same at appropriate place.

6. Custody certificate dated 30.04.2023 is taken on record. As per custody certificate, the petitioner is in custody since 28.04.2022 and he is not involved in any other offence.

7. Learned State counsel submits that police report has already been filed and charges stand framed. He further submits that out of 37 witnesses none has been examined. As per reply, the petitioner has been implicated on the basis of statement of respondent No.2.

8. In the case in hand, the petitioner was not named in the FIR and he came to be implicated on the basis of statement of respondent No.2 which was recorded after two years from the date of alleged incident. The respondent No.2 has furnished an affidavit deposing that under the pressure of her relatives, she had named the petitioner. There is no medical evidence to implicate the petitioner. The respondent No.2 who has implicated the petitioner is submitting that she has no objection if petitioner is released on bail. The petitioner is in custody since 28.04.2022 and he is not involved in any other offence. The Trial Court yet has to return definite findings on the disputed issues. There are 37 prosecution witnesses and till date no one has been examined, thus, there is abysmally low possibility of conclusion of trial in near future. 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.

9. 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.

10. 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

01.05.2023  
Mohit Kumar

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