

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

220

CRM-M-5680-2023

Date of Decision: 08.02.2023

Mohan Lal

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

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

Ms. Dimple Jain, AAG, Haryana

Ms. Anshul Agnihotri, Advocate for the complainant

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner, through instant petition under Section 439 Cr.P.C., is seeking regular bail in FIR No.225 dated 02.08.2022 under Sections 346 IPC (Sections 323, 376-D and 376(2)(n) of IPC added later on), Section 6 of Protection of Children from Sexual Offences Act, 2012 (for short '**POCSO Act**'), Sections 9 and 10 of Child Marriage Act and Section 75 of Juvenile Justice Act, registered at Police Station Ismailabad, District Kurukshetra.

2. Ms. Anshul Agnihotri, Advocate appeared and filed her Power of Attorney on behalf of the complainant. The same is taken on record and Registry is directed to tag at appropriate place.

3. As per the FIR, the case of prosecution is that Jasbir Singh son of Jeet Singh lodged a complaint with the police alleging that marriage of his niece (prosecutrix) was solemnized with Mohan Lal son

of Kurdia Ram about three months back. About 10 days back, prosecutrix came back to his home and on 01.08.2022 she left from there without disclosing anything. The age of his niece is 19 years. The police recovered prosecutrix and thereafter recorded her statements. On the basis of statements of prosecutrix, the petitioner and others were arrested under Section 376-D of IPC and Section 6 of POCSO Act.

4. Learned counsel for the petitioner, *inter alia* contends that marriage between the petitioner and prosecutrix was solemnized by family members of the prosecutrix and they have disclosed age of the prosecutrix more than 18 years which fact stands confirmed from the FIR where age of prosecution has been mentioned as 19 years. If prosecutrix is minor, in that case, it is the petitioner who has been cheated and the petitioner has not committed the alleged offence. The prosecutrix in her statement before the Trial Court has categorically disclosed that petitioner is her husband and she has solemnized marriage with him. She has turned hostile. The petitioner is in custody for more than 3 months. 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 District Kurukshetra. The petitioner has deep roots in the society. There is no possibility of flee from justice.

5. Learned counsel for the prosecutrix submits that she has no grievance against the petitioner and he is legally wedded husband of the

prosecutrix. The age of prosecutrix at the time of marriage was not less than 18 years, thus, marriage between the parties is valid and permissible by law.

6. Custody Certificate dated 07.02.2023 is taken on record. Registry is directed to tag the same at appropriate place.

7. Learned State Counsel submits that challan stands presented and charges stand framed. She further submits that there are 33 witnesses and prosecutrix stands examined. She confirms that prosecutrix has turned hostile. She expressed her inability to dispute the factum of marriage between the petitioner and prosecutrix.

8. It is undisputed fact that marriage was solemnized between the petitioner and prosecutrix and family members of the prosecutrix are not disputing that she was major at the time of marriage. The prosecutrix in her statement before the Trial Court has not supported case of the prosecution rather she has confirmed that petitioner is her husband and she has not levelled any allegation against her husband. The petitioner is in custody since 14.10.2022. There are 33 prosecution witnesses and possibility of conclusion of trial in near future is abysmally low. The petitioner cannot be kept behind the bars for indefinite period, especially when prosecutrix is not supporting case of the prosecution and she is legally wedded wife of the petitioner. 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.

9. 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.

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

08.02.2023
Mohit Kumar

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No