

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

214

CRM-M-5939-2023

Date of Decision: 09.02.2023

Muskan @ Kavita**...Petitioner****Versus****State of Haryana****...Respondent****CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL**

Present:- Mr. Rajesh Nain, Advocate for the petitioner

Ms. Dimple Jain, AAG, Haryana

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner, through instant petition under Section 439 Cr.P.C., is seeking regular bail in FIR No.516 dated 11.06.2021 under Sections 328, 343, 376, 365, 384, 506, 120-B of IPC and Section 5 of Immoral Traffic (Prevention) Act, 1956 (Section 370 IPC added later on), registered at Police Station Sadar Karnal, District Karnal.

2. The case of prosecution is that on 11.06.2021 police received complaint from the complainant whereby she sought legal action against Muskan wife of Naresh, Naresh and Binder. It was averred in the complaint that complainant got married with Ram Kumar about 11 years back as per Hindu rites and ceremonies and two children were born out of the said wedlock. About 1 and ½ year back Muskan and her husband stated living in the Mohalla of the complainant in a rented accommodation. Muskan started visiting house of the complainant and

started taking the complainant to her own house. The complainant on one day was made to consume some intoxicants. The husband of the accused raped while she was unconscious. The accused started blackmailing her and demanded Rs.50,000/- as they were having photographs and videos of the alleged incidents. On 30.05.2021, Muskan gave a telephonic call to the complainant and asked her to come to Gharaunda where Binder raped the complainant. She was kept there for five days.

3. Learned counsel for the petitioner, *inter alia* contends that petitioner has been wrongly implicated. The petitioner being lady cannot be held liable for commission of offence under Section 376 IPC. The petitioner has been implicated invoking Section 120-B IPC whereas she has no concern with the alleged offence which is evident from the fact that no video during investigation was recovered. The complainant was married lady and did not raise objection when for the first time she was subjected to rape. As per FIR, second time incident took place on 30.05.2020 whereas first incident took place much prior to the said date. The prosecutrix has not disclosed the actual date. The petitioner is in custody since 12.12.2021. 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 Karnal. The petitioner has deep roots in the society. There is no possibility of flee from justice.

4. Learned State Counsel on instructions from ASI Kuldeep confirms that petitioner is in custody since 12.12.2021 and she is not involved in any other offence, however, she submits that there are specific allegations against the petitioner. She has abetted the commission of alleged offence. The prosecutrix stands examined and she has supported the case of the prosecution.

5. I have heard learned counsel for the parties and scrutinized the record.

6. Proviso to clause (i) & (ii) of sub-section (1) of Section 437 Cr.P.C. provides that the court may release on bail if a person accused of commission of offence punishable with death or imprisonment for life is 'under the age of sixteen years or is a woman or is sick or infirm'.

7. While adverting with bail to a woman, a two judge bench of Hon'ble Supreme Court in ***Satender Kumar Antil v. CBI; (2022) 10 SCC 51*** has observed:

“69. Proviso to Section 437 of the Code mandates that when the accused is under the age of sixteen years, sick or infirm or being a woman, is something which is required to be taken note of. Obviously, the court has to satisfy itself that the accused person is sick or infirm. In a case pertaining to women, the court is expected to show some sensitivity. We have already taken note of the fact that many women who commit cognizable offences are poor and illiterate. In many cases, upon being young they have children to take care of, and there are many instances when the children are to live in

prisons. The statistics would show that more than 1000 children are living in prisons along with their mothers. This is an aspect that the courts are expected to take note of as it would not only involve the interest of the accused, but also the children who are not expected to get exposed to the prisons. There is a grave danger of their being inherited not only with poverty but with crime as well.”

8. In the case in hand, the challan stands presented and charges stand framed. The prosecutrix has already been examined. The petitioner is not involved in any other offence. There are 15 witnesses and till date only 1 witness has been examined. Thus, possibility of conclusion of trial in near future is abysmally low. 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.

In view of the above, 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.

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

09.02.2023
Mohit Kumar

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