

CRM-M-7197-2023

-1-

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

212

CRM-M-7197-2023
Date of Decision: 21.03.2023

Gursewak Singh @ Golu ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Surinder Garg, Advocate for the petitioner
Mr. Amish Sharma, AAG, Punjab
(assisted by ASI Jaijeet 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 concession of regular bail in FIR No.452 dated 22.10.2022 under Sections 363 & 366-A of Indian Penal Code, 1860 (for short 'IPC') registered at Police Station City Faridkot, District Faridkot.
2. The case of the prosecution is that petitioner enticed prosecutrix and kept at his home, from where the prosecutrix was recovered. Statement of prosecutrix was recorded under Section 161 and 164 Cr.P.C. In her statement under Section 164 Cr.P.C., she had stated that she had left home at her own accord. The FIR was registered on the complaint of mother of the prosecutrix.

CRM-M-7197-2023

-2-

3. Learned counsel for the petitioner, *inter alia* contends that prosecutrix was recovered from the house of the petitioner where all members were present. The prosecutrix in her statement under Section 164 Cr.P.C. has specifically stated that she went to home of the petitioner at her own accord. There is no allegation of sexual assault and prosecutrix had come to his home at her own accord where mother of the petitioner was also present. The petitioner is in custody since 22.10.2022 and he is a 19 years old boy. The further incarceration would spoil his life. The police has already completed investigation and filed challan, thus, no useful purpose is going to served by keeping the petitioner behind the bars. The petitioner has been wrongly implicated in the commission of alleged offence. The petitioner is permanent resident of District Faridkot. The petitioner has deep roots in the society. There is no possibility of flee from justice.

4. Short reply by way of affidavit dated 20.03.2023 of Jasmeet Singh, P.P.S., Deputy Superintendent of Police, Sub-Division, Faridkot filed on behalf of respondent-State is taken on record. Registry is directed to tag the same at appropriate place.

5. As per reply, the prosecutrix at the time of alleged offence was 15 years old and in the order of Sessions Court, it has been wrongly noted that she was 12 years old.

6. Custody certificate dated 20.03.2023 is taken on record. Registry is directed to tag the same at appropriate place.

CRM-M-7197-2023

-3-

7. Learned State Counsel submits that police report has already been filed and charges stand framed. He further submits that there are 10 witnesses and none has been examined. The petitioner is involved in the commission of grave offence.

8. In the case in hand, the prosecutrix was 15 years old and petitioner was 19 years old at the time of alleged incident. The prosecutrix in her statement under Section 164 Cr.P.C. had deposed that she had gone to house of the petitioner at her own accord. There is no allegation of assault i.e. sexual or non-sexual. The petitioner is in custody since 22.10.2022. Confining a 19 years old boy is not going to serve the purpose of criminal jurisprudence especially when there is no allegation of commission of sexual assault. The Trial Court yet has to return definite findings on the disputes issues. There are 10 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 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

21.03.2023
Mohit Kumar

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