

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

222

CRM-M-8226-2023

Date of Decision: 22.03.2023

Raju Rawat

...Petitioner

Versus

U.T., Chandigarh

...Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Vishnu Dutt, Advocate for the petitioner

Mr. Ankur Bali, Addl. P.P., U.T., Chandigarh
(assisted by SI Sundari)

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.27 dated 19.03.2021 under Sections 376-D, 452 of Indian Penal Code, 1860 (for short '**IPC**') [Sections 452 of IPC was deleted later on and Section 376-D of IPC was replaced with Section 376(2)(n) of IPC and Section 6 of Protection of Children from Sexual Offences Act, 2012 (for short '**POCSO Act**') was added later on] registered at Police Station North, Sector 3, Chandigarh.

2. The case of the prosecution is that statement of prosecutrix was recorded wherein she deposed that she is unmarried and she is not aware about her pregnancy. During the lockdown, she was alone at her

home and three boys entered her room from the roof and committed wrong act with her. On 24.02.2021, she came to know about her pregnancy. Her delivery was conducted on 25.02.2021 at 05:50 AM. She did not know father of the child. In statement dated 21.05.2021, under Section 164 Cr.P.C, she deposed that petitioner is biological father of the child.

3. Learned counsel for the petitioner, *inter alia* contends that as per DNA report, petitioner is not biological father of the child which belies all the allegations against him. He is in custody since 22.05.2021 and he is not involved in any other offence. The prosecutrix stands examined and she has turned hostile. The petitioner has been wrongly implicated in the commission of alleged offence. The petitioner is permanent resident of District Patiala. The petitioner has deep roots in the society. There is no possibility of flee from justice.

4. Status report dated 21.03.2023 of Kanwardeep Kaur, Senior Superintendent of Police, Union Territory Chandigarh filed on behalf of respondent-State is taken on record. Registry is directed to tag at appropriate place.

5. Custody certificate dated 22.03.2023 is taken on record. Registry is directed to tag the same at appropriate place.

6. Learned State counsel submits that police report has already been filed and charges stand framed. He further submits that out of 24

witnesses, 14 have already been examined which includes prosecutrix. He fairly concedes that prosecutrix has turned hostile and DNA report is not raising finger towards petitioner.

7. In the case in hand, there are allegations of rape against the petitioner, however, DNA report is not supporting case of the prosecution. The prosecutrix has turned hostile and petitioner is in custody since 22.05.2021. The Trial Court yet has to return definite findings on the disputed issues. There are 24 prosecution witnesses and till date only 14 have 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.

8. 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.

9. 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

22.03.2023
Mohit Kumar

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