

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

220

CRM-M-7751-2023

Date of Decision: 17.05.2023

Muhamad Shrif

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Ms. G.K. Mann, Senior Advocate with
Mr. Gursharan Singh, Advocate and
Mr. Komal Balain, Advocate for the petitioner

Mr. Shiva Khurmi, AAG, Punjab
(assisted by ASI Parminder Singh)

Ms. Raina Sabharwal Thakur, Advocate for the complainant

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.15 dated 18.01.2022 under Sections 363, 366-A & 120-B of Indian Penal Code, 1860 (for short 'IPC') registered at Police Station Kathunangal, Distirct Amritsar.

2. The case of the prosecution is that father of the victim lodged a complaint alleging that he is having 10 children. His youngest daughter is aged 14 years. Mustafa son of Latif wanted to marry his daughter and he sent his proposal but the complainant refused. On 17.01.2022 at about 05:00 PM, he, his wife and daughter were coming to Amritsar for treatment of his wife and due to darkness they alighted at bus stand

Kathunangal to go to the house of his relative. He went to purchase some eatable items. One *Scorpio* car, in which Mustafa along with others was sitting, came to his daughter and kidnaped her.

3. Ms. G.K. Mann, learned senior counsel for the petitioner, *inter alia* contends that another FIR dated 18.03.2022 has been registered against four persons alleging kidnapping of the victim. The statement of victim was recorded under Section 164 Cr.P.C. wherein she had stated that she had gone to her maternal aunt's house and she was not abducted. On the one hand, prosecution is claiming that victim has not been recovered whereas on the other hand in another FIR, afore-stated statement under Section 164 Cr.P.C. had been recorded. The petitioner in the inquiry (Annexure P-2) was found innocent. The petitioner was not named in the FIR and his name surfaced after nine months from the date of registration of FIR. The petitioner is in custody since 06.11.2022 and at present no case is pending against him. The petitioner has been wrongly implicated in the commission of alleged offence. The petitioner is permanent resident of District Ludhiana. The petitioner has deep roots in the society. There is no possibility of flee from justice.

4. Custody certificate dated 23.03.2023 is already on record. As per custody certificate, the petitioner is in custody since 06.11.2022 and at present no other case is pending against him.

5. Status report by way of affidavit dated 24.04.2023 of Manmohan Singh Aulakh, P.P.S., Deputy Superintendent of Police, Sub-

Division, Majitha, Amritsar filed on behalf of respondent-State 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 are yet to be framed. He further submits that there are 13 witnesses. The petitioner is involved in the commission of grave offence, thus, no leniency is warranted and release of petitioner would hamper the trial.

7. Learned counsel for the complainant submits that she has no objection if petitioner is released on bail.

8. In the case in hand, the petitioner is in custody since 06.11.2022 and at present no other case is pending against him. The petitioner was not named in the FIR, however, he was implicated after nine months from the date of registration of FIR. For the missing of victim, another FIR dated 18.03.2022 has been registered against four persons who are different from persons named in the present FIR. The statement of victim under Section 164 Cr.P.C. has been recorded in FIR dated 18.03.2022. Police report under Section 173 of Cr.P.C. stands filed, charges are yet to be framed. The Trial Court yet has to return definite findings on the disputed issues. There are 13 prosecution witnesses, 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/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

17.05.2023
Mohit Kumar

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