

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

229

CRM-M-7934-2023

Date of Decision: 25.05.2023

Raj Kumar @ Raju

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Fariad Singh Virk, Advocate for the petitioner

Mr. Shiva Khurmi, AAG, Punjab

(assisted by ASI Salinder Kumar)

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.177 dated 18.11.2022 under Sections 376, 323, 341 & 506 of Indian Penal Code, 1860 (for short 'IPC') registered at Police Station Lalru, District S.A.S. Nagar Mohali.

2. The case of the prosecution is that complainant lodged a complaint alleging that she does household chores. In 2011, she got married with Narinder Singh and she is blessed with two sons. Raj Kumar @ Raju is running a welding shop in front of her house. Two years back, he came to her house and told her that she is a very beautiful lady. He pushed her forcibly and laid her down on the bed and forcibly made relations with her. On 13.11.2022, there was marriage in her in-laws' family. She went to washroom to change her clothes. Accused

followed her. She made hue and cry and her husband came on the spot. On seeing her husband, accused fled away from the spot. On 15.11.2022 at 03:00 PM, her husband was present at home and accused came to their house under the influence of liquor. He gave iron rod blow on the head of her husband. She tried to rescue her husband but accused gave iron rod blow on her head. They raised hue and cry and accused fled from the spot.

3. Learned counsel for the petitioner, *inter alia* contends that as per FIR, the alleged incident took place two years prior to registration of the FIR and prosecutrix in her testimony has alleged that petitioner attempted to commit rape. It means there is no allegation of rape whereas challan has been presented under Section 376 IPC. Registration of FIR after two years itself is a dent in the case of the prosecution. The petitioner is in custody since 23.11.2022 and he 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 S.A.S Nagar Mohali. The petitioner has deep roots in the society. There is no possibility of flee from justice.

4. Custody certificate dated 23.05.2023 is taken on record. As per custody certificate, the petitioner is in custody since 23.11.2023 and he is not involved in any other offence.

5. Learned State Counsel submits that police report has already been filed and charges stand framed. He further submits that out of 14 witnesses, 2 have already been examined which includes prosecutrix. He

fairly concedes that prosecutrix in her examination has not made allegation of rape against the petitioner.

6. The petitioner is in custody since 23.11.2023 and he is not involved in any other offence. Police report under Section 173 of Cr.P.C. stands filed and charges stand framed. *Prima facie* there is substantial contradiction in the FIR vis-à-vis testimony of the prosecutrix. The prosecutrix in her examination has not made allegation of rape against the petitioner. The Trial Court yet has to return definite findings on the disputed issues. There are 14 prosecution witnesses and till date only 02 have been examined, thus, there is abysmally low possibility of conclusion of trial in near future. The material witness i.e. prosecutrix stands examined, thus, there is no possibility of winning over or pressurizing her. 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.

7. 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.

8. If the petitioner or his family members/associates make any attempt to threat/intimidate the witnesses in the present case, the State would be at liberty to move an application for cancellation of bail granted by this order.

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

25.05.2023
Mohit Kumar

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