

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

105+222

CRM-M-8185-2023 (O&M)

Date of Decision: 17.03.2023

Lakhwinder Singh

...Petitioners

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Riffi Bala Birla, Advocate for the petitioner

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

JAGMOHAN BANSAL, J. (ORAL)

CRM-12563-2023

For the reasons mentioned in the application, the application for placing on record amended petition is allowed. Amended petition is taken on record and Registry is directed to tag at appropriate place.

CRM stands disposed of.

CRM-M-8185-2023

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.26 dated 21.02.2020 under Sections 376 & 506 of Indian Penal Code, 1860 (for short 'IPC') and Section 6 of Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act') (Sections 365, 366-A & 343 of IPC and Section 4 of

POCSO Act, added later on and Section 6 of POSCO Act deleted later on) registered at Police Station City Jalalabad, District Fazilka.

2. The case of the prosecution is that complainant approached police authorities and made a statement that she is studying in 10th Standard in Government Senior Secondary School of Girls. On 13.02.2020, she had gone for her tuition. At 05:00 PM when she reached near flyover Lakhwinder Singh @ Lakhi stopped his *bullet* motorcycle near to her and asked her to accompany him. Out of fear, she sat on the motorcycle and he took her away to his home where his family members were present. The family members of Lakhwinder Singh told her that they would solemnize her marriage with their son. On 14.02.2020 at about 01:00 PM, Lakhwinder Singh raped her. She was kept in his home for 4 days. She escaped from there on 17.02.2020.

3. Learned counsel for the petitioner, *inter alia* contends that prosecutrix and her parents stand examined and they have been declared hostile. The petitioner is in custody since 18.05.2021. The petitioner and prosecutrix wanted to marry each other. It was a case of love affair. The petitioner has been wrongly implicated in the commission of alleged offence. The petitioner is permanent resident of District Fazilka. There is no possibility of flee from justice.

4. Custody certificate dated 17.03.2023 is taken on record. Registry is directed to tag the same at appropriate place. As per custody certificate, the petitioner is involved in three more cases. He has already

been acquitted in two cases and third case is pending before Additional Sessions Judge, Fazilka.

5. Learned State Counsel submits that police report has already been filed and charges stand framed. He further submits that out of 21 witnesses, 3 have already been examined which includes prosecutrix and her parents. The petitioner is involved in the commission of grave offence, thus, no leniency is warranted and release of petitioner would hamper the trial.

6. In the case in hand, the prosecutrix and her parents have miserably demolished case of the prosecution. They have turned hostile. The petitioner is in custody since 18.05.2021. There are 21 prosecution witnesses and till date only 3 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.

7. 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/Illaqa/Duty Magistrate concerned.

8. 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

17.03.2023
Mohit Kumar

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