

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

108+218

CRM-M-8530-2023 (O&M)

Date of Decision: 25.04.2023

Dharampal Singh Alias Dharma

...Petitioner

Versus

State of Punjab

...Respondent

**CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL**

Present:- Mr. Ashok Kumar Khunger, Advocate for the petitioner

Mr. Vipin Pal Yadav, Addl. AG, Punjab

Mr. Kamal Narula, Advocate for the complainant

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**JAGMOHAN BANSAL, J. (ORAL)**

**CRM-18267-2023**

Application for placing on record Annexure P-5 is allowed.

The same is taken on record subject to just exceptions. Registry is directed to tag at appropriate place.

CRM stands disposed of.

**CRM-M-8530-2023**

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.0095 dated 10.07.2022 under Sections 363, 366-A, 120-B of Indian Penal Code, 1860 (for short 'IPC') [Sections 465, 468 & 471 of IPC and Section 4 of Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act')]

added later on vide Rapat No.18 dated 13.10.2022, however, charges against petitioner and other co-accused framed only under Sections 363, 366-A & 120-B of IPC] registered at Police Station Sadar Jalalabad, District Fazilka.

2. The case of prosecution is that complainant lodged a complaint alleging that his daughter aged 15 years is studying in Government Senior Secondary School, Dhandi Kadeem. He along with his wife had gone for paddy plantation. On 04.07.2022, he received a telephonic call that his daughter has gone missing. He and his wife came back to home and came to know that Dharam Pal has enticed their daughter on the pretext of marriage.

3. Learned counsel for the petitioner *inter alia* submits that FIR was initially registered under Section 363, 366-A, 120-B of Indian Penal Code, 1860 and thereafter Sections 465, 468, 471 of IPC and Section 4 of Protection of Children from Sexual Offences Act, 2012, were added, however, Trial Court has framed charges under Sections 363, 366-A, 120-B IPC i.e. sections under which FIR was originally registered. The prosecutrix in her statement under Section 164 Cr.P.C. had denied developing of physical relations with the petitioner. The prosecutrix stands examined and she has not supported case of the prosecution. She has been declared hostile. The father of the petitioner has already been granted concession of regular bail vide order dated 29.09.2022 passed by Co-ordinate Bench of this Court in CRM-M-39442-2022. The petitioner

is in custody since 12.10.2022 and he is not involved in any other crime. The petitioner has been wrongly implicated in the commission of alleged offence. The petitioner is permanent resident of District Fazilka. The petitioner has deep roots in the society. There is no possibility of flee from justice.

4. Mr. Kamal Narula, Advocate appeared and filed his Power of Attorney on behalf of the complainant. The same is taken on record. Registry is directed to tag at an appropriate place.

5. Status report by way of affidavit dated 25.04.2023 of Atul Soni, P.P.S., Deputy Superintendent of Police, Sub-Division, Jalalabad filed on behalf of respondent-State is taken on record. Registry is directed to tag the same at appropriate place.

6. Custody certificate dated 24.04.2023 is taken on record. As per custody certificate, the petitioner is in custody since 13.10.2022 and he is not involved in any other crime.

7. Learned State Counsel submits that police report has already been filed and charges stand framed. He fairly confirms that neither charges have been framed under Sections 465, 468 & 471 of IPC nor under Section 4 of POCSO Act. He further submits that out of 11 witnesses only prosecutrix has been examined.

8. Learned counsel for the complainant submits that petitioner has committed offence punishable under Sections 465, 468, 471 IPC as well as offence punishable under Section 4 of POCSO Act, however, police has not invoked these provisions in the challan and accordingly charges have not been framed.

9. In the case in hand, admittedly, father of the petitioner has already been granted concession of regular bail vide order dated 29.09.2022 passed by this Court in CRM-M-39442-2022. The petitioner is in custody since 13.10.2022 and he is not involved in any other crime. The prosecutrix has turned hostile. No charge under Sections 465, 468, 471 IPC as well as offence punishable under Section 4 of POCSO Act has been framed. The Trial Court yet has to return definite findings on the disputed issues. There are 11 prosecution witnesses and till date only prosecutrix 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.

10. 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.

11. 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

25.04.2023  
Mohit Kumar

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