

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

213

CRM-M-8841-2023

Date of Decision: 12.05.2023

Rahul @ Pelia

...Petitioner

Versus

U.T., Chandigarh

...Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Satish Kumar, Advocate for the petitioner

Mr. A.M. Punchhi, P.P., U.T., Chandigarh

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 regular bail in FIR No. 127 dated 17.09.2022 under Sections 452 & 506 of Indian Penal Code, 1860 (for short '**IPC**') [Sections 458 & 354 of IPC and Section 8 of Protection of Children from Sexual Offences Act, 2012 (for short '**POCSO Act**') added later on], registered at Police Station Sector 11, Chandigarh.

2. The case of prosecution is that a complaint came to be filed by father of the prosecutrix alleging that on 12.09.2022, he was sleeping in his house. His children including his 14 years old daughter were sleeping on first floor of the house. Suddenly, an unknown boy wearing black colour mask trespassed in their house and gagged mouth of his daughter and threatened to kill her if she screamed. In the meantime, her

elder daughter got awake and started screaming. The unknown boy fled from the spot. The complainant filed another application dated 19.09.2022 wherein he came with a totally different story. In the said application, the complainant stated that a boy entered in the room of her daughter and he by putting a knife on her neck tried to commit rape. The petitioner was arrested on 17.09.2022 i.e. prior to filing of second application by the complainant.

3. Learned counsel for the petitioner, *inter alia* contends that petitioner on the date of alleged incident was out of Chandigarh. On the said day, he had gone to Saharanpur by train. He had requested to Trial Court to preserve the CCTV footage installed at Railway Station, Chandigarh and Railway Station, Saharanpur. The Trial Court has allowed application of the petitioner and CCTV footage of the cameras installed at Railway Stations stand preserved. The CCTV footage would make it clear that at the time of alleged incident, the petitioner was not at the spot of incident. The petitioner is neighbour of the prosecutrix so it was very convenient for her to identify at the first instance whereas name of the petitioner was disclosed in the statement recorded under Section 164 Cr.P.C. The petitioner is in custody since 18.09.2022 and he is not involved in any other offence. The petitioner has been wrongly implicated in the commission of alleged offence. The petitioner has deep roots in the society. There is no possibility of flee from justice.

4. Custody certificate dated 12.05.2023 is taken on record. As per custody certificate, the petitioner is in custody since 18.09.2022 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 20 witnesses, 7 have already been examined which includes the prosecutrix. 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 petitioner is in custody since 18.09.2022 and he is not involved in any other offence. Police report under Section 173 of Cr.P.C. stands filed and charges stand framed. No recovery is to be effected from the petitioner. There is dispute about presence of the petitioner and Trial Court yet has to return definite findings on the disputed issues. There are 20 prosecution witnesses and till date 7 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 the victim. 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. 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

12.05.2023
Mohit Kumar

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