

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

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CRM-M-10132-2023

Date of Decision: 02.03.2023

Avtar Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Ramnish Puri, Advocate for the petitioner

Mr. Amish Sharma, AAG, Punjab
(assisted by ASI Subash Chandra)

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.63 dated 29.03.2022 under Sections 354-A, 342 and 323 of Indian Penal Code, 1860 (for short '**IPC**') and Section 10 of Protection of Children from Sexual Offences Act, 2012 (for short '**POCSO Act**') registered at Police Station Chheharta, District Amritsar.

2. The case of the prosecution is that complainant made a statement before police authority that she is studying in 6th Class in Sri Guru Harkrishan Public School, G.T. Road, Amritsar. Her father Avtar Singh had beaten her as she was not studying. When she started studying then also he had beaten her without any reason. When her mother stopped her father from beating her, then they started quarrelling. The father instigated her maternal grandmother and maternal uncle that

prosecutrix's mother has illicit relations with her other maternal uncle. Upon this, her maternal grandmother and maternal uncle badly beaten her mother. They snatched their mobile phones. When her mother tried to make her bath, her father touched her breast. Her father forcibly committed rape upon her mother. On the basis of statement of prosecutrix FIR came to be registered against the petitioner, mother of the petitioner, mother-in-law of the petitioner, brother-in-law of the petitioner.

3. Learned counsel for the petitioner, *inter alia* contends that this Court vide order dated 27.09.2022 in CRM-M-39669-2022 has granted anticipatory bail to petitioner's brother-in-law (maternal uncle of prosecutrix), vide order dated 27.09.2022 in CRM-M-20864-2022 has granted anticipatory bail to grandmother of the prosecutrix and vide order dated 27.09.2022 in CRM-M-22309-2022 has granted anticipatory bail to maternal grandmother of the prosecutrix. The petitioner is in custody since 29.03.2022 and maximum sentence prescribed under Section 10 of POCSO is 5 years and all other offences are bailable. The petitioner 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 Amritsar. The petitioner has deep roots in the society. There is no possibility of flee from justice.

4. Custody certificate dated 01.03.2023 is taken on record. Registry is directed to tag the same at appropriate place. As per custody

certificate, the petitioner is in custody since 29.03.2022 and he is not involved in any other offence.

5. Learned State Counsel submits that charges are yet to be framed and there are possibilities of tampering of evidence on the part of petitioner. He further submits that there are total 13 prosecution witnesses.

6. In the case in hand, the prosecutrix has made allegations against her grandmother, maternal grandmother and paternal uncle apart from father. There are total four accused and at present three are on anticipatory bail. The petitioner is in custody since 29.03.2022. All the alleged offences are bailable except offence under Section 10 POCSO Act. Maximum prescribed sentence is 5 years and petitioner is in custody for almost one year. The State cannot take for granted liberty of citizens of the country. The petitioner cannot be kept in custody for indefinite period especially when maximum prescribed sentence is 5 years and prosecutrix has made allegations against all the senior members of the family. It is also interesting to notice that prosecutrix had made allegations against family members of paternal and maternal side. There are 13 prosecution witnesses and till date charges have not been framed, 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 petitioner is not involved in any other criminal case. 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/Illaq/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

02.03.2023
Mohit Kumar

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No