

CRM-M-11784-2023

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

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CRM-M-11784-2023

Date of Decision: 22.03.2023

Javed Mohd.

...Petitioner

**Versus**

State of Haryana

...Respondent

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

Present:- Mr. Kuldeep Singh Siwach, Advocate for  
Mr. Ashish Gupta, Advocate for the petitioner  
Ms. Dimple Jain, AAG, Haryana

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

1. The petitioner through instant petition under Section 439 Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') is seeking regular bail in FIR No.455 dated 21.09.2020 under Sections 365, 506 & 376-D of Indian Penal Code, 1860 (for short 'IPC') and Section 6 of Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act') registered at Police Station Sadar Nuh, District Nuh.

2. The case of the prosecution is that on 21.09.2020, the complainant lodged a complaint alleging that on the intervening night of 20-21.09.2020 while his family members were sleeping, his minor daughter went for urination at 04-05:00 AM, however, she did not return. In the morning, he came to know from the neighbourer that Tofiq @ Tuffa, Riham and Akhlak had kidnapped his minor daughter. She had

taken away Rs.1 Lac and one gold chain with her. The girl was recovered who in her statement under Section 164 Cr.P.C. named the petitioner. The petitioner was arrested on 04.10.2021. The challan came to be presented against Javed (petitioner) and Iqbal. The persons named in the FIR i.e. Tofiq and Rihan were found innocent.

3. Learned counsel for the petitioner, *inter alia* contends that statement of prosecutrix and complainant stand recorded and they have turned hostile. The petitioner is not involved in any other offence. The petitioner is in custody since 04.10.2021. The petitioner has been wrongly implicated in the commission of alleged offence. The petitioner is permanent resident of District Nuh. The petitioner has deep roots in the society. There is no possibility of flee from justice.

4. Learned State Counsel submits that police report has already been filed and charges stand framed. She submits that petitioner is in custody since 04.10.2021. She further submits that out of 20 witnesses, 8 have already been examined which includes prosecutrix and complainant. Learned state counsel fairly concedes that complainant and prosecutrix have turned hostile.

5. In the case in hand, the complainant and prosecutrix have turned hostile. The petitioner was not named in the FIR. The petitioner is not involved in any other offence and he is in custody since 04.10.2021. The Trial Court yet has to return definite findings on the disputed issues. There are 20 prosecution witnesses and till date only 8 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.

6. 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/Illaq/Duty Magistrate concerned.

7. 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

22.03.2023  
Mohit Kumar

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|---------------------------|--------|
| Whether speaking/reasoned | Yes/No |
| Whether reportable        | Yes/No |