

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

208

CRM-M-11234-2023

Date of Decision: 02.06.2023

Dharambir**...Petitioner****Versus****State of Haryana****...Respondent****CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL**

Present:- Mr. Vikas Bishnoi, Advocate for the petitioner

Ms. Priyanka Sadar, AAG, Haryana
(assisted by ASI Nirmal Kaur)

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 concession of regular bail in FIR No.227 dated 14.07.2021 under Sections 313, 376(2)(n), 452 & 506 of Indian Penal Code, 1860 (for short 'IPC') [during investigation Section 120-B and 201 of IPC and Section 3(2)(v) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (for short 'SC/ST Act') are added but as per charge sheet, charges against the petitioner stand framed under Sections 452, 376(2)(n), 313 and 506 of IPC] registered at Police Station Uklana, District Hisar.

2. The case of the prosecution is that petitioner as per statement of prosecutrix in the month of April' 2020 came to her house and made forcible physical relations with her. The petitioner again came to the

house of prosecutrix in January' 2021 and forcibly made relations. The prosecutrix got pregnant and petitioner got her child aborted. The petitioner and his accomplice i.e. Anoop and Saroj came to be arrested.

3. Learned counsel for the petitioner, *inter alia* contends that the petitioner is in custody since 17.07.2021 and he is not involved in any other offence. No recovery is to be effected from the petitioner. It is a case of consensual relation. The prosecutrix had admitted that her sons as well as her mother-in-law were present at home when petitioner made physical relations. The FIR came to be registered after more than one year from the date of first incident and six month after the second incident. The prosecutrix is a matured and grown-up lady having two children, thus, she could understand consequences of her act and omissions. The petitioner has been wrongly implicated in the commission of alleged offence. The petitioner is permanent resident of District Hisar. The petitioner has deep roots in the society. There is no possibility of flee from justice.

4. Reply by way of affidavit dated 01.06.2023 of Gaurav Sharma, H.P.S., Deputy Superintendent of Police, Barwala, Hisar filed on behalf of respondent-State is taken on record. Registry is directed to tag the same at appropriate place.

5. Custody certificate dated 01.06.2023 is taken on record. As per custody certificate, the petitioner is in custody since 17.07.2021 and he is not involved in any other offence.

6. Learned State Counsel submits that police report has already been filed and charges stand framed. She further submits that out of 22 witnesses, 7 have already been examined which includes prosecutrix. The petitioner is involved in the commission of grave offence, thus, no leniency is warranted and release of petitioner would hamper the trial.

7. The petitioner is in custody since 17.07.2021 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. The prosecutrix is a matured and grown-up lady having two children, thus, she could understand consequences of her act and omissions. The question of '*consent*' as contemplated by Section 90 read with Section 375 IPC is disputed question of fact and the Trial Court yet has to return definite findings on the disputed issues. There are 22 prosecution witnesses and till date only 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 her. 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.

8. 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.

9. If the petitioner or his family members/associates make any attempt to threat/intimidate the witnesses in the present case, the State would be at liberty to move an application for cancellation of bail granted by this order.

10. 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

02.06.2023
Mohit Kumar

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