

CRM-M-11669-2023 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

108+214

CRM-M-11669-2023 (O&M)

Date of Decision: 12.05.2023

Malkit Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Manoj R. Sharma, Advocate for the petitioner

Ms. Guramrit Kaur, DAG, Punjab
(assisted by ASI Jaswant Singh)

JAGMOHAN BANSAL, J. (ORAL)

CRM-21606-2023

Application for placing on record Annexure A-3 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-11669-2023

1. The petitioner, through instant petition under Section 439 Cr.P.C., is seeking regular bail in FIR No.52 dated 19.05.2022 under Sections 363, 366 and 120-B of Indian Penal Code, 1860 (for short 'IPC') [Sections 376 and 201 of IPC and Section 6 of Prevention of Children from Sexual Offences Act, 2012 (hereinafter referred to as POCSO Act) added later on] registered at Police Station Dera Baba Nanak Police District Batala, District Gurdaspur.

2. The case of the prosecution is that complainant-Rajinder Kumar lodged a complaint alleging that he has two children. His daughter, whose date of birth is 01.03.2005, is studying in 10+2 class. On 17.05.2022, in the morning she went to coaching centre, however, did not come back. He has come to know that his daughter was in contact with Malkit Singh. He is sure that his daughter has been enticed by Malkit Singh in connivance with his sister Ramandeep Kaur on the pretext of marriage.

3. Learned counsel for the petitioner *inter alia* submits that petitioner is in custody since 23.05.2022. The petitioner is a 25 years old boy. The prosecutrix in her cross-examination has not made any allegation against the petitioner disclosing commission of offence punishable under Sections 366 & 376 of IPC or Section 6 of POCSO Act. She had admitted that at her own accord she went to Amritsar and stayed one night in a hotel and thereafter in Golden Temple. The petitioner is not involved in any other case. As per statement of the prosecutrix, she never visited house of sister of the petitioner still FIR was lodged against sister of the petitioner and she remained in custody for 4 months. The petitioner has been wrongly implicated in the present case. The petitioner has deep roots in the society. There is no possibility of flee from justice.

4. Learned State counsel, on instructions from ASI Jaswant Singh, submits that challan stands presented and charges stand framed.

She further submits that out of 16 witnesses, 2 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.

5. In the case in hand, the petitioner is in custody since 23.05.2022 and he is not involved in any other offence. Police report under section 173 of Cr.P.C. stands filed, charges stand framed. The prosecutrix stands examined, thus, there is no possibility of winning over or pressurizing her. The Trial Court yet has to return definite findings on the disputed issues. There are 16 prosecution witnesses and till date only 2 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/Illaqa/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

12.05.2023
Mohit Kumar

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