

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

214

CRM-M-12725-2023

Date of Decision: 05.05.2023

Noor Hussain

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Liaqat Ali, Advocate for
Mr. Ritesh Pandey, Advocate for the petitioner
Mr. Jaitishwar Singh, AAG Punjab
Mr. Mohd. Salim, Advocate for the complainant

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 concession of regular bail in FIR No.163 dated 14.09.2021 under Sections 363, 366, 506 & 34 of Indian Penal Code, 1860 (for short 'IPC') (Sections 376, 376-D of IPC added later on) registered at Police Station Haryana District Hoshiarpur.

2. The case of the prosecution is that complainant Hassan Din lodged a complaint alleging that Palli Gujjar wanted to solemnize marriage of daughter/prosecutrix with his son Saifu. The complainant initially agreed to the proposal, however, later on he refused because he came to know that Saifu was addicted to intoxicants. On 02.09.2021 at about 10:30 PM, Saifu, Hassan Din, Bana came to his house and abducted his daughter with intention to solemnize her marriage with

Saifu. In her statement under Section 164 Cr.P.C., the prosecutrix disclosed that Saifu, Bana, Hassan Din, Noor Hussain, Jummu and Fakir tied her mouth when she was sleeping and abducted her. Fakir and Bana abetted the co-accused to do wrong act with her and Saifu, Hasnu, Noor Hasan, Jummu developed physical relations with her.

3. Learned counsel for the petitioner, *inter alia* contends that this Court has granted concession of anticipatory bail to three co-accused and petitioner is in custody since 16.02.2023. The petitioner has been wrongly implicated in the commission of alleged offence. The petitioner is permanent resident of District Hoshiarpur. The petitioner has deep roots in the society. There is no possibility of flee from justice.

4. Mr. Mohd. Salim, Advocate appeared and filed his Power of Attorney on behalf of the complainant. The same is taken on record. Registry is directed to tag at an appropriate place

5. Mr. Mohd. Salim, learned counsel for the complainant on instructions from prosecutrix, who is present in Court, submits that petitioner was not involved in commission of alleged offence and prosecutrix has no objection if petitioner is released on bail.

6. Short reply by way of affidavit dated 05.05.2023 of Surinderpal Singh, P.P.S., Deputy Superintendent of Police, Sub-Division Rural, District Hoshiarpur filed on behalf of respondent-State is taken on record. Registry is directed to tag the same at appropriate place.

7. Custody certificate dated 03.05.2023 is taken on record. As per custody certificate, the petitioner is in custody since 16.02.2023 and he is involved in another FIR under Section 342, 323, 506 & 34 of IPC.

8. Learned State counsel submits that challan is yet to be presented. He further confirms registration of FIR by the petitioner against relatives of complainant and by relatives of complainant against the petitioner.

9. In the case in hand, the petitioner and family of complainant have lodged FIRs against each other. The prosecutrix, who is present in Court along with his counsel, has stated that petitioner has been wrongly implicated in the alleged FIR and she has no objection if petitioner is released on bail. This Court has already granted concession of anticipatory bail to three co-accused. The petitioner is in custody since 16.02.2023 and second case seems to be outcome of the enmity between the parties. 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.

10. 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.

11. 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

05.05.2023
Mohit Kumar

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