

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

220

CRM-M-13223-2023

Date of Decision: 18.05.2023

Devender @ Bintu

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Arnav Ghai, Advocate for the petitioner

Ms. Priyanka Sadar, AAG, Haryana

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.55 dated 30.01.2020 under Sections 365 of Indian Penal Code, 1860 (for short 'IPC') (Section 6 of POCSO Act, Sections 328, 343, 366A, 370, 370A, 375, 376, 120-B of IPC and Sections 3, 4, 5, 6, 7 of Immoral Trafficking Act added later on) registered at Police Station Sadar Thanesar, District Kurukshetra.

2. The case of the prosecution is that father of the prosecutrix on 30.01.2020 lodged complaint with the police alleging that his daughter aged 13 years has gone missing from their house on 27.01.2020. The prosecutrix was recovered on 19.05.2020 and thereafter statements of prosecutrix and her father were recorded on 19.05.2020. The police recorded multiple statements of the prosecutrix under Section 161 Cr.P.C. The prosecutrix in her subsequent statements disclosed name of different persons. The prosecutrix did not disclose name of the petitioner in her first

statement, second statement and third statement, however, name of the petitioner was disclosed in the fourth statement dated 06.08.2020 of the prosecutrix. It was disclosed that they put her in the car and took her away to a liquor shop near village Jhirbar. Petitioner-Niksan and co-accused Bintu committed rape with her and thereafter they took her away to Lucky Dhaba. The owner of Lucky Dhaba, namely, Ashok and his servant Bir Kumar telephonically called Kajal. Ashok took her away on motorcycle and dropped near fly over Pipli from where Kajal and Ravi took her away to Makanda Kheri. Kajal and Ravi used to take away her to hotels and used to force her to have sexual intercourse with customers. In the hotel, owner of the hotel and his servant Sandeep committed rape with her. One day she escaped from house of Kajal and reached bus stand where Sonu Khan met her. Sonu Khan took her away to Ganesh Colony and raped her. Sonu Khan thereafter took her away to a rented accommodation where owner of the house asked for Aadhaar Card. She disclosed owner of the house that Sonu had brought her forcefully. The owner of the house called police.

3. Learned counsel for the petitioner, *inter alia* contends that police conducted polygraph test of the petitioner and he was found innocent. Police did not file challan against him, however, petitioner was summoned under Section 319 Cr.P.C. The petitioner preferred anticipatory bail before this Court, which was allowed, however, Hon'ble Supreme Court vide order dated 06.05.2022 set aside order passed by this Court and cancelled bail granted to the petitioner. The petitioner surrendered before Trial Court and he is in custody since 13.05.2022. Co-accused Manish @ Manoj and Niksan were also granted concession of anticipatory bail by this

Court, however, it was cancelled by Hon'ble Supreme Court vide order dated 06.05.2022. This Court vide order dated 07.12.2022 passed in CRM-M-29853-2022 and order dated 27.02.2023 passed in CRM-M-2426-2023 has granted regular bail to co-accused(s). This Court apart from Manish @ Manoj and Niksan has granted regular bail to co-accused Dimple Goel, Ravi Parkash, Surinder Singh, Bir Kumar and Dinesh. The petitioner was neither named in the FIR. The police found the petitioner innocent and did not name the petitioner as an accused in the challan. The prosecutrix initially made allegation against Hari Chand. The prosecutrix in her subsequent statements exonerated Hari Chand. The petitioner is son of Hari Chand. 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 Kurukshetra. The petitioner has deep roots in the society. There is no possibility of flee from justice.

4. Learned State Counsel fairly concedes that police in its investigation did not find the petitioner guilty and accordingly, challan was not presented against him. The Trial Court in exercise of powers conferred by Section 319 Cr.P.C. summoned the petitioner. She further submits that there are 56 prosecution witnesses and till date 18 witnesses have been examined. She further confirms that this Court has granted concession of regular bail to similarly situated co-accused i.e. Manish @ Manoj and Niksan.

5. I have heard the arguments of learned counsels for the parties and perused the record.

6. In view of order dated 07.12.2022 passed in CRM-M-29853-2022 and order dated 27.02.2023 passed in CRM-M-2426-2023 in the case of co-accused(s), the petitioner deserves to be released on regular bail on the ground of parity. Accordingly, 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

18.05.2023
Mohit Kumar

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