

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

218

CRM-M-21976-2023

Date of Decision: 05.05.2023

Sukhpreet Alias Manpreet

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Vishavjeet Singh Rishi, 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 concession of regular bail in FIR No.167 dated 11.09.2021 under Sections 363, 366-A & 376(2)(n) 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 Ding, District Sirsa.

2. The case of the prosecution is that complainant lodged a complaint dated 11.09.2021 alleging that he is doing labour work. He has three children. His eldest child is 16 years old and she is studying in 10+1. On 10.09.2021, all the family members had gone to sleep. The victim was sleeping with her mother. In the morning at about 5:00 AM when they woke up, the victim was not found in her cot. They have come to know that accused on the pretext of marriage has enticed his daughter.

3. Learned counsel for the petitioner, *inter alia* contends that prosecutrix in her statement under Section 164 Cr.P.C. has stated that she had gone with the petitioner at her own accord. She wants to solemnize marriage with him. In her examination, she has been declared hostile and she has declared her age almost 18 years. There is no medical evidence of commission of alleged offence of rape. The petitioner is in custody since 03.10.2021 and he 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 Sirsa. The petitioner has deep roots in the society. There is no possibility of flee from justice.

4. Custody certificate dated 04.05.2023 is taken on record. As per custody certificate, the petitioner is in custody since 03.10.2021 and he is not involved in any other offence.

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

6. In the case in hand, the petitioner is in custody since 03.10.2021 and he is not involved in any other offence. The material witness i.e. prosecutrix and complainant stand examined. The prosecutrix has turned hostile. There is dispute about her age. The Trial Court yet has to return definite findings on the disputed issues. There are 22 prosecution

witnesses and till date only 6 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.

7. 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.

8. 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>