

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

219

CRM-M-16143-2022

Date of Decision: 10.03.2023

Rahul Sharma

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Ms. Surinder Kaur, Advocate for
Ms. Ruhani Chadha, Advocate for the petitioner
Mr. Shiva Khurmi, AAG, Punjab
(assisted by ASI Harcharan Singh)

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 regular bail in FIR No.41 dated 26.03.2021 under Sections 363 & 366-A of Indian Penal Code, 1860 (for short 'IPC') [Sections 376-D and 120-B of IPC and Sections 6 and 8 of Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act') were added later on] registered at Police Station Punjab Agriculture University, District Ludhiana.

2. The case of the prosecution is that on the basis of statement of father of prosecutrix, FIR was registered. The father of the prosecutrix in his complaint averred that his eldest daughter is about 15 years of age and younger daughter is 12 years old. Both are studying in Chander Model School, Rishi Nagar, Haibhowal Khurd, Ludhiana. On

25.03.2021, both the sisters after taking their computer class went to Dargah of Baba Sunet Shah, Khichlu Nagar. At about 05:10 PM, he received a phone call from his wife that both the daughters have not returned home. He went to Dargah but could not find them. He returned to his home and saw that his younger daughter was at home who told him that her sister after paying obeisance at Dargah told her that she would be coming within 5 minutes but she did not return. He believed that Rahul Sharma has enticed away his daughter by alluring her to perform marriage with him.

3. Learned counsel for the petitioner *inter alia* contends that prosecutrix in her statement under Section 161 and 164 Cr.P.C. did not allege commission of offence of rape. From the cross-examination of the prosecutrix, it can be easily inferred that she had voluntarily left her home with the petitioner. It is a case of love affair between the parties. The petitioner is in custody since 29.03.2021 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 Ludhiana. The petitioner has deep roots in the society. There is no possibility of flee from justice.

4. Custody certificate dated 09.03.2023 is taken on record. Registry is directed to tag the same at appropriate place.

5. Learned State Counsel submits that police report has already been filed and charges stand framed. He further submits that out of 15

witnesses, 4 witnesses 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.

6. In the case in hand, the petitioner is in custody since 29.03.2021 and as per custody certificate, he is not involved in any other offence. *Prima facie* from the perusal of cross-examination of the prosecutrix, it comes out that it is not a case of enticing on the part of petitioner. There are 15 prosecution witnesses and till date only 4 witnesses have been examined, thus, there is abysmally low possibility of conclusion of trial in near future. The material witness i.e. prosecutrix stand examined. 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 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

10.03.2023
Mohit Kumar

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