

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

218

CRM-M-15081-2023

Date of Decision: 26.05.2023

Vishal

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Wazir Singh, 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.75 dated 14.03.2021 under Sections 363, 366A of Indian Penal Code, 1860 (for short 'IPC') [Sections 506 & 120-B of IPC and Section 6 of Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act') added later on] registered at Police Station Nissing, District Karnal.

2. The case of the prosecution is that on 14.03.2021, complainant moved an application alleging that his daughter has been missing from his house since the night of 13.03.2021. He suspects that she has been enticed by Vishal who is also missing from his house. Sagar son of Ramesh and Roshan son of Kishan are also involved in this case. On 19.03.2021, victim was recovered. She was left at One Stop

Centre, Karnal. Her statement under Section 164 Cr.P.C was recorded and she was medically examined. Sections 4 of POCSO was added in the FIR. The petitioner was arrested on 21.03.2021.

3. Learned counsel for the petitioner, *inter alia* contends that petitioner is in custody since 21.03.2021. The prosecutrix has already been examined as well as cross-examined. As per statement under Section 164 Cr.P.C., there is no allegation of rape against the petitioner, however, prosecutrix had made allegation of rape in her statement before the Trial Court when she was examined as PW-1. As per prosecutrix, the petitioner forcibly gave mobile phone to her. As per prosecution, the victim was sleeping with her parents at the time of alleged offence of kidnapping which is highly improbable. Co-accused Sonu has already been granted concession of regular bail vide order dated 10.11.2021 passed by this Court in CRM-M-32029-2021. Another accused-Roshan has been found innocent. An application filed under Section 319 Cr.P.C seeking summoning of Roshan stands dismissed. The prosecutrix at the time of commission of alleged offence was more than 16 years old. 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 Karnal. The petitioner has deep roots in the society. There is no possibility of flee from justice.

4. Learned State Counsel submits that police report has already been filed and charges stand framed. She further submits that out of 13

witnesses, 5 have already been examined which includes 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. The petitioner is in custody since 21.03.2021 and he is not involved in any other offence, as confirmed by learned State counsel. Police report under Section 173 of Cr.P.C. stands filed and charges stand framed. Co-accused vide order dated 10.11.2021 passed in CRM-M-32029-2021 by this Court has been granted concession of regular bail. Two accused in the investigation have been found innocent. No recovery is to be effected from the petitioner. The Trial Court yet has to return definite findings on the disputed issues. There are 13 prosecution witnesses and till date only 5 have been examined, thus, there is abysmally low possibility of conclusion of trial in near future. The material witness i.e. prosecutrix stands examined, thus, there is no possibility of winning over or pressurizing her. 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. If the petitioner or his family members/associates make any attempt to threat/intimidate the witnesses in the present case, the State would be at liberty to move an application for cancellation of bail granted by this order.

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

26.05.2023
Mohit Kumar

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