

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

217

CRM-M-16502-2023

Date of Decision: 31.05.2023

Akash

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Ms. Garima Sharma, 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.220 dated 14.06.2022 under Sections 342, 363, 366 and 376 of Indian Penal Code, 1860 (for short 'IPC') registered at Police Station Ferozepur Jhirka.

2. The case of the prosecution is that husband of the prosecutrix lodged a complaint on 14.06.2022 alleging that his marriage was solemnized on 19.04.2016 with victim and three children were born out of this wedlock. His wife is Asha Worker in Public Health Department and he is working at Petrol Pump, Gurugram. Accused-Akash made a call on mobile of his wife. A quarrel took place between them. The matter was compromised through Panchayat. On the night of 07.06.2022, he had gone for duty and his wife along with children was at home. On 08.06.2022 when he came back, he found that his wife is missing. He

further found that cash of Rs.1.5 Lacs, 9 *Tolas* gold ornaments and 2 Kg silver is also missing.

3. Learned counsel for the petitioner, *inter alia* contends that petitioner is a 24 years old man and prosecutrix is 22 years old lady. She is having three children. There was consensual relation between the parties which is evident from *Whatsapp* chat and different photographs. The prosecutrix at her own accord eloped with the petitioner. She being matured, grown-up and married lady having three children can understand consequences of her act and omissions. As per FIR, Rs.1.5 Lacs, 9 *Tolas* of gold and 2 Kg silver was found missing. Firstly, it is highly improbable to believe that a man working at petrol pump as labourer is having aforesaid cash and gold/silver articles and secondly, there is no recovery of cash and such articles. The petitioner is in custody since 10.07.2022 and he is not involved in any other offence. No recovery is to be effected from the petitioner. The petitioner has been wrongly implicated in the commission of alleged offence. The petitioner is permanent resident of District Palwal. There is no possibility of flee from justice.

4. Custody certificate dated 30.05.2023 is taken on record. As per custody certificate, the petitioner is in custody since 10.07.2022 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 15

witnesses, 7 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.

6. The petitioner is in custody since 10.07.2022 and he is not involved in any other offence. Police report under Section 173 of Cr.P.C. stands filed, charges stand framed. No recovery is to be effected from the petitioner. The Trial Court yet has to return definite findings on the disputed issues. There are 15 prosecution witnesses and till date 7 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. There is allegation of theft of good amount of cash and heavy amount of gold/silver articles, however, there is no recovery even though petitioner along with prosecutrix were caught within 10 days from the date of eloping. 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 and judgments of Hon’ble Supreme Court in *Uday Versus State of Karnataka, (2003) 4 SCC 46; Deelip Singh alias Dilip Kumar Versus State of Bihar, (2005) 1 SCC 88; Deepak Gulati Versus State of Haryana, (2013) 7 SCC 675; Dr. Dhruvaram Murlidhar Sonar Versus State of Maharashtra and Others (2019) 18 SCC 191* and *Naim Ahamed Versus State, (2023) Live Law (SC) 66*, 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.

8. 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.

9. 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

31.05.2023
Mohit Kumar

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