

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

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CRM-M-16907-2023

Date of Decision: 31.05.2023

Dinesh**...Petitioner****Versus****State of Haryana****...Respondent****CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL**

Present:- Mr. Varun Gupta, Advocate for the petitioner

Ms. Priyanka Sadar, AAG, Haryana

Mr. Sanjeev, Advocate for the complainant

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.88 dated 05.03.2022 under Section 376(2)(n) & 506 of Indian Penal Code, 1860 (for short 'IPC') registered at Police Station Uklana.

2. The case of the prosecution is that complainant, a 39 years old lady, lodged a complaint alleging that her husband died in 2013 and since 2015 she is living at Uklana Mandi. Dinesh is friend of her deceased husband. He by taking benefit of the situation has repeatedly committed rape upon her. He has made her vulgar videos on his mobile and blackmailed her. Last time he made physical relation with her on 03.11.2021 at her house.

3. Learned counsel for the petitioner, *inter alia* contends that no video has either been recovered or has been disclosed in the statement made by prosecutrix in her examination. The prosecutrix on earlier occasion lodged FIR under Sections 323, 354A, 452, 506 of IPC and Section 8 of POCSO Act. She turned hostile and petitioner was acquitted. She lodged FIR under Sections 323, 325, 452, 506 of IPC against the petitioner on 27.11.2021 whereas present FIR came to be registered on 05.03.2022 alleging commission of offence of rape on 03.11.2021. No recovery is to be effected from the petitioner. The petitioner is in custody since 16.03.2022. The petitioner has been wrongly implicated in the commission of alleged offence. The petitioner is permanent resident of District Jind. There is no possibility of flee from justice.

4. Custody certificate dated 31.05.2023 is taken on record. As per custody certificate, the petitioner is in custody since 16.03.2022 and he is involved in other cases.

5. Status report by way of affidavit dated 26.05.2023 of Kaptan Singh, H.P.S., Deputy Superintendent of Police, Law and Order, Hisar filed on behalf of respondent-State is taken on record. Registry is directed to tag the same at appropriate place.

6. Learned State Counsel as well as learned counsel for the prosecutrix submit that petitioner is involved in many other cases, thus, he does not deserve concession of regular bail. Learned State counsel

further submits that police report has already been filed and charges stand framed. There are 12 witnesses and prosecutrix has already been examined. The petitioner is involved in the commission of grave offence, thus, no leniency is warranted and release of petitioner would hamper the trial.

7. The petitioner is in custody since 16.03.2022 and in other cases, either he is on bail or has already been acquitted. The present bail application cannot be decided on the basis of other pending cases especially when most of the cases have been filed by the prosecutrix. There is *prima facie* substance in the contention of the petitioner that FIR dated 27.11.2021 was registered under Sections 323, 325, 452 & 506 of IPC whereas present FIR has been registered on 05.03.2022 alleging commission of offence of rape on 03.11.2021. 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 12 prosecution witnesses and till date only prosecutrix has 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.

8. 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/Illaq/Duty Magistrate concerned.

9. 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.

10. 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

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