

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

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CRM-M-17632-2023

Date of Decision: 26.05.2023

Mangat Ram

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Sumer Singh Brar, Advocate for the petitioner

Mr. Shiva Khurmi, AAG, Punjab

(assisted by ASI Jasbir Singh)

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.150 dated 31.10.2019 under Sections 363, 366, 376 of Indian Penal Code, 1860 (for short '**IPC**') read with Section 6 of Protection of Children from Sexual Offences Act, 2012 (for short '**POCSO Act**') registered at Police Station Mahilpur, District Hoshiarpur.

2. The case of the prosecution is that prosecutrix came in contact with petitioner through *Facebook*. They fell in love and started regularly talking with each other. The prosecutrix at that point of time was 16 years old. The petitioner solemnized marriage with prosecutrix and on the basis of forged documents, they filed CRM-M-8382-2019 before this Court seeking protection of their lives and liberty. This Court

vide order dated 25.02.2019 disposed of the aforesaid petition, however, father of the prosecutrix filed CRM-15096-2019 in CRM-M-8382-2019 before this Court seeking action against the petitioner on the ground that he has filed forged documents while filing the protection petition. This Court vide order dated 08.05.2019 directed the competent authority to take appropriate action against the petitioner. FIR came to be registered against the petitioner. The prosecutrix was medically examined and during her medical examination, human sperms were detected. The petitioner was arrested on 09.08.2021.

3. Learned counsel for the petitioner, *inter alia* contends that as per FIR, the petitioner made physical relations with prosecutrix in the month of February' 2019 whereas samples were drawn in December' 2019 and as per medical report, sperms were detected. It is highly improbable that sperms of any male can be detected after nine months. The doctor in her cross-examination has also confirmed this fact. It is a case of love marriage. The petitioner is in custody since 09.08.2021 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 Hoshiarpur. The petitioner has deep roots in the society. There is no possibility of flee from justice.

4. Custody certificate dated 24.05.2023 is taken on record. As per custody certificate, the petitioner is in custody since 10.08.2021 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. He further submits that out of 17 witnesses, 9 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 10.08.2021 and he is not involved in any other offence. Police report under section 173 of Cr.P.C. stands filed and charges stand framed. As per medical report, sperms were detected after nine months from the date of commission of alleged offence which *prima facie* seems to be unbelievable. The Trial Court yet has to return definite findings on the disputed issues. There are 17 prosecution witnesses and till date only 9 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.

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. 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

26.05.2023
Mohit Kumar

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