

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

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CRM-M-18098-2023

Date of Decision: 21.04.2023

Sanjeev Kumar

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

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

Mr. Shiva Khurmi, AAG, Punjab
(assisted by ASI Judge 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 concession of regular bail in FIR No.241 dated 21.10.2022 under Section 346 of Indian Penal Code, 1860 (for short 'IPC') [Sections 363, 366, 366-A IPC added later on and Section 346 of IPC deleted later on while filing challan] registered at Police Station Haibowal, District Ludhiana.

2. The case of the prosecution is that on 21.10.2022, Bhanu Parkash-complainant made a statement alleging that he has two sisters aged 17 and 14 years, respectively. He received a telephonic call from his father at about 05:30 PM that both his sisters had gone for shopping but have not returned. He suspects that his sisters have been concealed at some place by some unknown persons. FIR came to be registered. On 16.11.2022, in the supplementary statement, complainant stated that age

of his elder sister is 19 years and younger sister is 16 years. Sanjeev Kumar had enticed his sisters on the pretext of marriage.

3. Learned counsel for the petitioner, *inter alia* contends that there was proposal of marriage of the petitioner with one of the victims, however, it could not be materialized which annoyed the victims and her family members. They, just to implicate the petitioner, have lodged present FIR. The police has acted in connivance with complainant which is evident from the fact that as per G.D. dated 15.11.2022 prepared at Police Station, Sector 9, Ambala City, the petitioner was apprehended at Ambala. There was no one with him at the time of arrest, however, as per recovery memo dated 16.11.2022 prepared at Police Station Haibowal Kalan, Ludhiana, the petitioner was apprehended along with victims. As per statement dated 11.01.2023 of victims, the petitioner called both the victims and told them that he is going to solemnize marriage with both of them and they accompanied him. The petitioner, at that point of time, was married and this fact was known to them. The petitioner is in custody since 18.11.2022 and he is not involved in any other offence. It is a case of total false implication. The petitioner is permanent resident of District Ambala. The petitioner has deep roots in the society. There is no possibility of flee from justice.

4. Custody certificate dated 20.04.2023 is taken on record. As per custody certificate, the petitioner is in custody since 18.11.2022 and he is not involved in any other crime.

5. Learned State counsel submits that police report has already been filed and charges are yet to be framed. 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 18.11.2022 and he is not involved in any other crime. Recovery memo dated 16.11.2022 prepared at Police Station Ludhiana and General Diary dated 15.11.2022 prepared at Police Station Ambala are diametrically opposite to each other and apparently indicate that there was either connivance or misuse of power on the part of police officials. Age of both victims by their brother was disclosed less than 18 years and later on he changed age of one sister. There are 7 prosecution witnesses and till date even charges have not been framed, thus, petitioner cannot be kept behind the bars for indefinite period. 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/Illaq/Duty Magistrate concerned.

8. The personal liberty of citizens of the country is paramount consideration of Constitutional Courts. The Constitutional Courts are assigned the role of sentinel on the qui vive as regards fundamental rights guaranteed by Constitution of India. Though Courts are not supposed to comment on merits while adjudicating bail application yet in view of peculiar fact and circumstances of the present case, the Trial Court is requested to look into the act and conduct of police officials. If it is found that petitioner has been falsely implicated as is coming out from G.D. recorded at Police Station Ambala and recovery memo recorded at Police Station Ludhiana, appropriate directions be issued to the competent authority to take stern action.

(JAGMOHAN BANSAL)
JUDGE

21.04.2023
Mohit Kumar

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