

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

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CRM-M-18529-2023

Date of Decision: 28.04.2023

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

Present:- Mr. N.K. Malhotra, 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.448 dated 11.10.2021 under Sections 354A, 201, 376, 509, 452, 506 & 511 of Indian Penal Code, 1860 (for short '**IPC**') registered at Police Station Sadar, Rohtak.

2. The case of the prosecution is that on 11.10.2021, prosecutrix lodged a complaint alleging that in the intervening night of 10/11.10.2021, she was sleeping in front room of her house. At about 10:30 PM, Bijender @ Kala son of Ramdhari, who is her neighbourer, entered in her house by scaling the wall of her house and came in her room and tried to close the door of her room. When she woke up, she found that he was wearing only underwear. She cried. He broke the

string and pressed her neck. On hearing her noise, her son Manjeet came there and on seeing him, the accused fled from the spot.

3. Learned counsel for the petitioner, *inter alia* contends that petitioner and prosecutrix are distant relatives and they are neighbours. Cases are pending between both the families. The prosecutrix is a 60 years old lady and she is having grandchildren. The prosecutrix and her son stand examined. There are material contradictions in the statement before the Trial Court and contents of FIR. She has contradicted even to the extent of garments which the petitioner was wearing. The petitioner is in custody since 16.11.2021 and he has already been acquitted in all other cases lodged against him. The petitioner has been wrongly implicated in the commission of alleged offence. The petitioner is permanent resident of District Rohtak and he is staying with his family members. There is no possibility of flee from justice. The acquittal of petitioner in all other cases indicate that petitioner has been falsely implicated.

4. Custody certificate dated 20.04.2023 is already on record. As per custody certificate, the petitioner was involved in 3 more cases, however, he has already been acquitted in all the cases. In the present case, he is in custody since 16.11.2021.

5. Learned State Counsel submits that police report has already been filed and charges stand framed. She further submits that out of 15 witnesses, 6 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. In the case in hand, the petitioner is in custody since 16.11.2021 and at present no other case is pending against him. The prosecutrix and petitioner are distant relatives and they are neighbours. They are not in good terms. *Prima facie*, there is contradiction in the examination-in-chief of the prosecutrix. The Trial Court yet has to return definite findings on the disputed issues. There are 15 prosecution witnesses and till date only 6 have been examined, thus, there is abysmally low possibility of conclusion of trial in near future. 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. 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

28.04.2023
Mohit Kumar

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