

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

213

CRM-M-18934-2022

Date of Decision: 30.05.2023

Jiwan Singh @ Ranjit Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Pritpal Singh Miglani, Advocate for the petitioner

Mr. A.P.S. Tung, DAG, Punjab
(assisted by SI Bhupinder 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 regular bail in FIR No.0026 dated 18.03.2021 under Sections 376-D of Indian Penal Code, 1860 (for short 'IPC') and Section 8 of Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act') [later on investigation report under Section 173(2) Cr.P.C. was filed for offences under Sections 376-DB of IPC and Section 6 of POCSO Act] registered at Police Station Jhabal, District Tarn Taran.

2. The case of the prosecution is that complainant lodged a complaint alleging that on 17.03.2021 at about 04:00 PM, she had gone to the shop of Jiwan Singh to purchase some eatables. In his shop, Partap Singh @ Mota was already standing there and when she asked Jiwan Singh to give her eatable, Partap Singh caught hold her arm and took her inside the shop. Jiwan put down the shutter of the shop and they put off her *salwar* and started doing

bad act with her. She got frightened and after lifting shutter of the shop, came out and narrated the whole incident to her mother.

3. Learned counsel for the petitioner, *inter alia* contends that prosecutrix stands examined and she has turned hostile. As per medical record even hymen was not found ruptured, thus, there is no question of commission of rape on the part of the petitioner. The petitioner is in custody since 31.03.2021 and he is not involved in any other offence.

4. Custody certificate dated 28.05.2023 is taken on record. As per custody certificate, the petitioner is in custody since 31.03.2021 and he is not involved in any other offence.

5. Learned State Counsel does not dispute the fact that prosecutrix has turned hostile qua petitioner as well as co-accused. He further does not dispute that hymen of prosecutrix was not found ruptured. He further submits that out of 25 witnesses, 5 have already been examined which includes prosecutrix.

6. The petitioner is in custody since 31.03.2021 and he is not involved in any other offence. Neither prosecutrix nor medical evidence is supporting case of the prosecution. The prosecutrix has turned hostile and as per medical evidence, even hymen was not found ruptured. No recovery is to be effected from the petitioner. The Trial Court yet has to return definite findings on the disputed issues. There are 25 prosecution witnesses and till date only 5 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/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

30.05.2023
Mohit Kumar

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