

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

217+2

CRM-M-18775-2023

Date of Decision: 22.05.2023

Pardeep

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Amandeep Singh, Advocate for the petitioner

Ms. Priyanka Sadar, AAG, Haryana

Mr. Jai Singh Yadav, 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 concession of regular bail in FIR No. 13 dated 28.01.2023 under Sections 376-D, 343, 328 & 34 of Indian Penal Code, 1860 (for short '**IPC**') registered at Police Station Satnali, District Mahendergarh.

2. The case of prosecution is that on 28.01.2023, the prosecutrix moved an application before police authorities averring that she got married with Manish on 21.01.2016. Manish and his sister left her at her parental home for 10-12 days. When she returned her matrimonial home on 11.04.2022, Manish asked her as to why she had come back. He said he would chop her legs and would kill her. She telephoned Arun, Advocate, who is son of aunt of Manish. Arun told her to come to him as he would settled their matrimonial dispute. Arun took

away her to his farm house where he committed rape upon her. Pardeep and Rajesh who were present there also committed rape upon her.

3. Learned counsel for the petitioner *inter alia* contends that marriage of the complainant with Manish came to be dissolved vide order dated 25.02.2022 passed by Family Court, Narnaul, thus, there was no question of leaving the complainant at her parental home by Manish and thereafter coming back of complainant to the house of Manish. The alleged incident took place on 11.04.2022 whereas FIR came to be registered on 28.01.2023 which shows that after dissolution of marriage FIR has been registered. The petitioner is maternal uncle of husband of the complainant. It is highly improbable that petitioner, in the presence of his brother-in-law and another relative would commit rape upon their daughter-in-law. The challan has already been presented. This Court vide order dated 28.04.2023 passed in CRM-M-12072-2023 has granted concession of anticipatory bail to co-accused. The petitioner is in custody since 25.03.2023 and he is not involved in any other crime. The petitioner has been wrongly implicated in the commission of alleged offence. The petitioner is permanent resident of District Mahendergarh. The petitioner has deep roots in the society. There is no possibility of flee from justice.

4. Custody Certificate dated 20.05.2023 filed by respondent-State is taken on record. Registry is directed to tag the same at appropriate place.

5. Learned State Counsel and learned counsel for the complainant submit that police report has already been filed and charges are yet to be framed. She further submits that there are 14 prosecution witnesses.

6. In the case in hand, the petitioner is in custody since 25.03.2023 and he is not involved in any other offence. Police report under Section 173 of Cr.P.C. stands filed and charges are yet to be framed. This Court vide order dated 28.04.2023 passed in CRM-M-12072-2023 has granted concession of anticipatory bail to co-accused. The complainant is divorced daughter-in-law of the brother-in-law of the petitioner. The Trial Court yet has to return definite findings on the disputed issues. There are 14 prosecution witnesses, 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/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

22.05.2023
Mohit Kumar

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