

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

224

CRM-M-19481-2023

Date of Decision: 17.05.2023

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

Present:- Ms. Rashi Shahrawat, Advocate with
Ms. Punam Singh, Advocate and
Mr. Bhanu Udai, 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.36 dated 17.02.2023 under Section 376, 328, 509, 120-B of Indian Penal Code, 1860 (for short '**IPC**') registered at Police Station Rewari City, Rewari.

2. The case of the prosecution is that prosecutrix lodged a complaint alleging that on 28/29.01.2023, Babli came to her house and told about a suitable match for her son. On the asking of Babli, on 31.01.2023 at about 05/05:30 PM, she went to Babli's house on a motorcycle with a boy named Uday. Ghansham-petitioner was already there. Uday brought tea for her. Babli and Uday did not take tea. She and Ghanshyam took tea and prosecutrix started losing senses. After one and half hour she regained conscious. She suspected that some wrong act has

been committed upon her. Uday dropped her to her house and thereafter, Ghanshyam told her that he has committed wrong act with her.

3. Learned counsel for the petitioner, *inter alia* contends that prosecutrix is a 50 years old lady and she is habitual of lodging FIRs. On the earlier occasion, she lodged FIR against her minor neighbour alleging that he has sexually assaulted her grandson. The daughter-in-law of the prosecutrix had lodged FIR against her alleging that she is running a brothel. The prosecutrix turned hostile in FIR registered by her and her daughter-in-law turned hostile in the FIR registered against her. As per FIR, petitioner telephonically informed prosecutrix that he has raped her. The story made by prosecutrix is *prima facie* false especially when she is 50 years and she is involved in other cases in one or another way. The petitioner is in custody since 18.02.2023 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 Rewari. The petitioner has deep roots in the society. There is no possibility of flee from justice.

4. Learned State Counsel submits that police report has already been filed and charges stand framed. She further submits that out of 18 witnesses none has been examined. The petitioner is involved in the commission of grave offence, thus, no leniency is warranted and release of petitioner would hamper the trial.

5. In the case in hand, the petitioner is a 55 years old man and prosecutrix is 50 years old lady. Indubitably, she had lodged FIR against her neighbour and her daughter-in-law had lodged FIR against her. The foundation of both the FIRs apart from present FIR is sexual assault. The petitioner is in custody since 18.02.2023 and he is not involved in any other offence, as confirmed by learned State counsel. Police report under Section 173 of Cr.P.C. stands filed and charges stand framed. The Trial Court yet has to return definite findings on the disputed issues. There are 18 prosecution witnesses and till date none has 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;

6. 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.

7. 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

17.05.2023
Mohit Kumar

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