

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

212

CRM-M-20618-2023

Date of Decision: 01.05.2023

Gurpreet

...Petitioner

Versus

State of Haryana and Another

...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Sandeep Singh Jattan, Advocate for the petitioner

Ms. Dimple Jain, AAG, Haryana
(assisted by SI Paramjeet Kaur)

Mr. Hasan Kaur, Advocate for respondent No.2

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.469 dated 09.09.2020 under Sections 363, 366-A, 376(3) of Indian Penal Code, 1860 (for short 'IPC') and Section 6 of Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act') (Section 376(2)(n) of IPC added later on) registered at Police Station Sadar Pehowa, District Kurukshetra.

2. Mr. Hasan Kaur, Advocate appeared and filed his Power of Attorney on behalf of respondent No.2. The same is taken on record. Registry is directed to tag at an appropriate place.

3. The case of the prosecution is that complainant (*Tai* of the victim) lodged a complaint on 09.09.2020 alleging that prosecutrix is staying with her and her brother-in-law is residing in Canada for last two years. The prosecutrix is 15 years and 8 months old and two months back Gurpreet Singh son of Bhinder Singh has enticed her. After one and half month, the prosecutrix was recovered and was returned to the complainant. The prosecutrix again on 08.09.2020 left her home without informing anybody. FIR came to be registered. On 03.09.2021, the prosecutrix was recovered along with two months girl child.

4. Learned counsel for the petitioner, *inter alia* contends that prosecutrix has solemnized marriage with the petitioner and they are blessed with a girl child. The prosecutrix in her examination has not supported case of the prosecution and she at present is staying with family members of the petitioner. The petitioner is in custody since 26.11.2022 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 Kurukshetra. The petitioner has deep roots in the society. There is no possibility of flee from justice.

5. Learned State Counsel submits that police report has already been filed and charges stand framed. She further submits that out of 25 witnesses, 2 have already been examined which includes prosecutrix. She fairly confirms that prosecutrix has turned hostile and even in her statement under Section 164 Cr.P.C., she has not supported case of the prosecution.

6. Learned counsel for the respondent No.2-prosecutrix along with prosecutrix is present in Court. She submits that prosecutrix has solemnized marriage with the petitioner and she is staying with family members of the petitioner. She is blessed with a girl child and incarceration of the petitioner is spoiling life of prosecutrix as well her child.

7. In the case in hand, the petitioner is in custody since 26.11.2022 and he is not involved in any other offence, as confirmed by learned State counsel. The prosecutrix has not supported case of the prosecution rather she is seeking release of the petitioner who is her husband. The prosecutrix is blessed with a girl child. The Trial Court yet has to return definite findings on the disputed issues. There are 25 prosecution witnesses and till date only 2 have been examined, thus, there is abysmally low possibility of conclusion of trial in near future. The material witness i.e. prosecutrix stands examined and she has turned hostile. 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.

8. 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.

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

01.05.2023
Mohit Kumar

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