

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

215

CRM-M-21675-2023

Date of Decision: 05.05.2023

Lajwanti

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Sukhvir Singh Sahu, Advocate for the petitioner

Mr. Jaitishwar Singh, AAG, Punjab

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.125 dated 24.05.2022 under Sections 363, 366-A, 376 & 120-B of Indian Penal Code, 1860 (for short 'IPC') and Sections 3, 4 & 6 of Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act') registered at Police Station City Malout, District Sri Muktsar Sahib.

2. The case of the prosecution is that complainant lodged a complaint alleging that his daughter is about 16 years old. On 18.05.2022 as usual, he went for labour work and when he came back for lunch, he found that his daughter has been enticed by Mandeep Kumar on the pretext of marriage. He searched for his daughter but he could not find her. The girl was recovered and she in her statement under Section 161 Cr.P.C. made allegation of rape against Mandeep Kumar.

The allegation against petitioner, who is mother of Mandeep Kumar, is that she asked prosecutrix to depose in favour of Mandeep Kumar. The prosecutrix refused to accompany her father, thus, as confirmed by learned State counsel, she at present is in Nari Niketan, Malout.

3. Learned counsel for the petitioner, *inter alia* contends that petitioner has been implicated only because she is mother of Mandeep Kumar with whom the prosecutrix had eloped. The petitioner is in custody since 21.02.2023 and she 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 Fatehabad. The petitioner has deep roots in the society. There is no possibility of flee from justice.

4. Custody certificate dated 04.05.2023 is taken on record. As per custody certificate, the petitioner is in custody since 22.02.2023 and she is not involved in any other offence.

5. Learned State counsel submits that police report has already been filed and charges stand framed. He further submits that out of 19 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.

6. Proviso to clause (i) & (ii) of sub-section (1) of Section 437 Cr.P.C. provides that the court may release on bail if a person accused of

commission of offence punishable with death or imprisonment for life is ‘under the age of sixteen years or is a woman or is sick or infirm’.

7. While adverting with bail to a woman, a two judge bench of Hon’ble Supreme Court in ***Satender Kumar Antil v. CBI; (2022) 10 SCC 51*** has observed:

“69. *Proviso to Section 437 of the Code mandates that when the accused is under the age of sixteen years, sick or infirm or being a woman, is something which is required to be taken note of. Obviously, the court has to satisfy itself that the accused person is sick or infirm. In a case pertaining to women, the court is expected to show some sensitivity. We have already taken note of the fact that many women who commit cognizable offences are poor and illiterate. In many cases, upon being young they have children to take care of, and there are many instances when the children are to live in prisons. The statistics would show that more than 1000 children are living in prisons along with their mothers. This is an aspect that the courts are expected to take note of as it would not only involve the interest of the accused, but also the children who are not expected to get exposed to the prisons. There is a grave danger of their being inherited not only with poverty but with crime as well.*”

8. In the case in hand, the petitioner is in custody since 22.02.2023 and she is not involved in any other offence. There is no allegation of rape against her, however, she has been arrested on the sole ground that she had asked prosecutrix to depose in favour of her son. The

Trial Court yet has to return definite findings on the disputed issues. There are 19 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.

9. 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.

10. 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

05.05.2023
Mohit Kumar

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