

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

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CRM-M-22619-2022

Date of Decision: 09.03.2023

Naresh Kumar

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

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

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

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Section 439 Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') is seeking regular bail in FIR No.516 dated 11.06.2021 under Sections 120, 328, 343, 365, 376, 384, 506 & 370 of Indian Penal Code, 1860 (for short 'IPC') (Section 370 of IPC added later on) and Section 5 of the Immoral Traffic (Prevention) Act, 1956 registered at Police Station Sadar Karnal, District Karnal.

2. The case of prosecution is that on 11.06.2021 police received complaint from the complainant whereby she sought legal action against Muskan wife of Naresh, Naresh and Binder. It was averred in the complaint that complainant got married with Ram Kumar about 11 years back as per Hindu rites and ceremonies and two children were born out of the said wedlock. About 1 and ½ year back Muskan and her husband

started living in the Mohalla of the complainant in a rented accommodation. Muskan started visiting house of the complainant and started taking the complainant to her own house. The complainant on one day was made to consume some intoxicants. The husband of the accused raped while she was unconscious. The accused started blackmailing her and demanded Rs.50,000/- as they were having photographs and videos of the alleged incidents. On 30.05.2021, Muskan gave a telephonic call to the complainant and asked her to come to Gharaunda where Binder raped the complainant. She was kept there for five days.

3. Learned counsel for the petitioner, *inter alia* contends that petitioner has been wrongly implicated. The wife of the petitioner stands released on regular bail vide order dated 09.02.0223 passed by this Court in CRM-M-5939-2023. From the perusal of statement under Section 164 Cr.P.C., it is quite evident that there was no allegation of rape against the petitioner. The complainant stands examined as well as cross-examined. No video during investigation was recovered. The complainant was married lady and did not raise objection when for the first time she was subjected to rape. As per FIR, second time incident took place on 30.05.2020 whereas first incident took place much prior to the said date. The prosecutrix has not disclosed the actual date. The petitioner is in custody since 12.12.2021. The petitioner 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

Karnal. The petitioner has deep roots in the society. There is no possibility of flee from justice.

4. Learned State Counsel on instructions from SI Sukhpal confirms that petitioner is in custody since 12.12.2021 and he is not involved in any other offence, however, she submits that there are specific allegations against the petitioner. The prosecutrix stands examined and she has supported the case of the prosecution.

5. I have heard learned counsel for the parties and scrutinized the record.

6. In the case in hand, the challan stands presented and charges stand framed. The prosecutrix has already been examined. The petitioner is not involved in any other offence. There are 15 witnesses and till date only 1 witness has been examined. Thus, possibility of conclusion of trial in near future is abysmally low. The petitioner was not implicated in the statement under Section 164 Cr.P.C. and wife of the petitioner stands released on regular bail vide order dated 09.02.2023 passed by this Court in CRM-M-5939-2023. 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 tempering 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 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. 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

09.03.2023
Mohit Kumar

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No