

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

208

CRM-M-24338-2022

Date of Decision: 04.05.2023

Sunny

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Naveen Bawa, Advocate for the petitioner

Mr. Shiva Khurmi, AAG, Punjab
(assisted by SI Khiv Kirpal Singh)

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.108 dated 09.04.2022 under Sections 354-A, 354-B of Indian Penal Code, 1860 (for short 'IPC') [Section 8 of Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act') added later on] registered at Police Station Sahnewal, District Ludhiana.

2. The case of the prosecution is that complainant lodged a complaint alleging that on 09.04.2022 at about 11:00 AM, she had gone to market along with her son Fateh. Her minor daughter and her grandmother were at home. Sunny who was friend of his son entered into their house and started sexually assaulting her minor daughter. He kissed

her without her consent. The neighbour came at the spot after hearing cries of the victim and petitioner ran away.

3. Learned counsel for the petitioner, *inter alia* contends that petitioner is in custody since 10.04.2022 and maximum sentence prescribed under Section 354-B of IPC is 7 years. The maximum sentence prescribed under Section 354-A is 3 years and it is 5 years under Section 8 of POCSO Act. The trial is fixed for prosecution evidence and prosecutrix for last 6 dates has not come forward. The petitioner 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 Ludhiana. The petitioner has deep roots in the society. There is no possibility of flee from justice.

4. Custody certificate dated 02.05.2023 is taken on record. Registry. As per custody certificate, the petitioner is in custody since 10.04.2022 and he is not involved in any other crime.

5. Learned State counsel submits that police report has already been filed and charges stand framed. He further submits that out of 14 witnesses, none has been examined. He fairly concedes that despite order dated 09.03.2023 of this Court, the prosecutrix is not coming forward for last 6 dates for her examination.

6. In the case in hand, the petitioner is charged for commission of offence punishable under Section 354-A and 354-B of IPC as well

Section 8 of POCSO Act. The petitioner is not involved in any other offence and he is in custody since 10.04.2022. The prosecutrix despite repeated opportunities is not coming forward for her examination and petitioner cannot be kept in custody for indefinite period especially when maximum sentence prescribed for commission of alleged offence is 7 years. Nothing is to be recovered from the petitioner and he is resident of District Ludhiana. The Trial Court yet has to return definite findings on the disputed issues. There are 14 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.

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/Illaq/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

04.05.2023
Mohit Kumar

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