

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

213

CRM-M-24623-2022

Date of Decision: 27.01.2023

Sandeep Kumar

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Narinder Singh Sindher, Advocate for the petitioner

Ms. Dimple Jain, AAG, Haryana

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner, through instant petition under Section 439 Cr.P.C. is seeking regular bail in FIR No.237 dated 24.04.2021 (Annexure P-1) under Sections 376 (2)(n), 313, 506 & 34 of Indian Penal Code, 1860 and Section 6 of Protection of Children from Sexual Offences Act, 2012 (for short '**POCSO Act**') registered at Police Station Samalkha, , District Panipat.

2. As per FIR, the petitioner was on visiting terms with the complainant and during his visits, he came in the contact of daughter of the complainant. He raped daughter of the complainant while she was alone at home and he repeated the same incident. The daughter of the complainant got pregnant and petitioner got her pregnancy terminated.

3. Learned counsel for the petitioner, *inter alia* contends that parents of the prosecutrix had furnished affidavit dated 13.03.2021 (Annexure P-5) deposing that date of birth of their daughter is

10.01.2002 and she has solemnized marriage with Sandeep Kumar-petitioner.

Learned counsel for the petitioner further submits that petitioner has solemnized marriage with prosecutrix on 05.02.2021. The prosecutrix stands examined as well cross-examined. She has not supported the case of the prosecution rather she has denied all the allegations levelled against the petitioner. The petitioner is in custody since 29.05.2021. 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 Panipat. The petitioner has deep roots in the society. There is no possibility of flee from justice.

4. Custody certificate dated 19.01.2023 is taken on record. Registry is directed to tag the same at appropriate place.

5. Learned State Counsel submits that there are 21 prosecution witnesses and 3 stand examined. The affidavit of the parents of the prosecutrix is prior to registration of FIR. She does not dispute the fact that prosecutrix has miserably spoiled case of the prosecution.

6. I have heard the arguments of learned counsel for the parties and scrutinized the record.

7. The petitioner is admittedly in custody since 29.05.2021. The prosecutrix stands examined as well as cross-examined and in her cross-examination she has miserably demolished case of the prosecution. The

parents of the prosecutrix in their affidavits have confirmed age of the prosecutrix. The averments of the parents are based upon Aadhaar Card of the prosecutrix. There are total 21 witnesses and till date 3 have been examined, thus, there is abysmally low possibility of conclusion of trial in near future especially when prosecutrix has solemnized marriage with the petitioner and she has turned hostile.

8. Keeping in view these facts and circumstance, 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/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

27.01.2023
Mohit Kumar

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