

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

225

CRM-M-24095-2023

Date of Decision: 17.05.2023

Ashwani Verma

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Amit Kumar Saini, Advocate for the petitioner

Mr. Shiva Khurmi, AAG, Punjab
(assisted by ASI Balkaran 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.0026 dated 08.02.2023 under Section 376 of Indian Penal Code, 1860 (for short '**IPC**') [Sections 4, 16 of Protection of Children from Sexual Offences Act, 2012 (for short '**POCSO Act**') added later on] registered at Police Station Division No.5, District Police Commissionerate Ludhiana.

2. The case of the prosecution is that prosecutrix lodged a complaint alleging that she is 17 years old and studying in 10+1. Pankaj Sharma sent a friend request to her on *Instagram* about 2 years back. They started sending messages to each other. He threatened her to send her nude photograph. She sent her nude photograph. Thereafter, petitioner started blackmailing her. He threatened to kill her brother and

demanded more nude photographs. On 02.02.2023, he called her to come to near bus stand. On the pretext of some refreshment, he took her away to a hotel where a matured person was standing. The said person took from him Aadhaar Card and took away them to a room in the hotel and Pankaj bolted the door from inside. She tried to open the door, however, on account of her short height, she could not open the door. Pankaj committed rape upon her.

3. Learned counsel for the petitioner, *inter alia* contends that as per investigation and challan, the petitioner on the asking of owner of the hotel has provided room to Pankaj and prosecutrix. It was Shambu who was present in room. The role of the petitioner was confined to providing room only. The *bona fide* of the petitioner is evident from the fact that he collected Aadhaar Card of Pankaj and got visitor's register signed from both of them. The petitioner is in custody since 09.02.2023 and he is a 59 years old man. 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 Ludhiana. The petitioner has deep roots in the society. There is no possibility of flee from justice.

4. Custody certificate dated 16.05.2023 is taken on record. As per custody certificate, the petitioner is in custody since 11.02.2023 and he is not involved in any other offence.

5. Learned State Counsel submits that police report has already been filed and charges are yet to be framed. Two accused are absconding. He further submits that there are 20 witnesses. The petitioner is involved in the commission of grave offence, thus, no leniency is warranted and release of petitioner would hamper the trial.

6. In the case in hand, the petitioner is in custody since 09.02.2023 and he is not involved in any other offence. The petitioner was not named in the FIR and he has been implicated on the basis of statement of co-accused. There is no allegation of rape against the petitioner and he has been implicated for providing room to main accused. Police report under Section 173 of Cr.P.C. stands filed, charges are yet to be framed. The Trial Court yet has to return definite findings on the disputed issues. There are 20 prosecution witnesses, 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/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

17.05.2023
Mohit Kumar

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