

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

227

CRM-M-24542-2023

Date of Decision: 18.05.2023

Gurmail Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Guninder Singh Brar, Advocate for the petitioner

Mr. Shiva Khurmi, AAG, Punjab
(assisted by ASI Harjinder 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.89 dated 09.11.2022 under Sections 376 & 506 of Indian Penal Code, 1860 (for short 'IPC') registered at Police Station Lakhewali, District Sri Muktsar Sahib.
2. The case of the prosecution is that prosecutrix lodged a complaint alleging that petitioner has committed rape upon her.
3. Learned counsel for the petitioner, *inter alia* contends that prosecutrix in her statement under Section 164 Cr.P.C did not make allegation against the petitioner and she has turned hostile. The petitioner is in custody since 10.11.2022 and he 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 Sri

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

4. Custody certificate dated 17.05.2023 is taken on record. As per custody certificate, the petitioner is in custody since 10.11.2022 and he 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 20 witnesses, 4 have already been examined which includes prosecutrix. He fairly confirms that prosecutrix has turned hostile and she was major at the time of alleged offence.

6. In the case in hand, prosecutrix is major and she in her statement under Section 164 Cr.P.C did not make allegation against the petitioner. She has turned hostile. The petitioner is in custody since 10.11.2022 and he is not involved in any other offence. Police report under Section 173 of Cr.P.C. stands filed, charges stand framed. The prosecutrix stands examined, thus, there is no possibility of winning over or pressurizing her. The Trial Court yet has to return definite findings on the disputed issues. There are 20 prosecution witnesses and till date only 4 have 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/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

18.05.2023
Mohit Kumar

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