

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

236

CRM-M-25704-2023

Date of Decision: 25.05.2023

Manju

...Petitioner

Versus

State of Punjab

...Respondent

**CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL**

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

Mr. Shiva Khurmi, AAG, Punjab  
(assisted by ASI Dalbir Singh)

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**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.010 dated 20.01.2023 under Sections 365, 342, 376(2)(n), 323 & 34 of Indian Penal Code, 1860 (for short '**IPC**') registered at Police Station City Sri Muktsar Sahib, District Sri Muktsar Sahib.

2. The case of the prosecution is that complainant lodged a complaint alleging that she has studied upto 10+2 standard. For last 4-5 months, she was talking to Sagar over mobile. On 25.12.2022, her mother left her at the house of her aunt (*Massi*) at Muktsar. When she spoke to Sagar, she told him that she has come to house of her aunt and asked him not to call on mobile. On 01.03.2023, Sagar, his mother Manju, uncle Jatinder and Shekhar came there in a car and forcibly took her away to Ahuja Colony, Abohar. They confined her from 01.01.2023

to 15.01.2023. Sagar committed rape upon her against her wishes. On 16.01.2023, she alone left from Abohar and went to Ganganagar.

3. Learned counsel for the petitioner, *inter alia* contends that prosecutrix has solemnized marriage with Sagar i.e. son of the petitioner. The prosecutrix has furnished an affidavit dated 16.05.2023 (Annexure P-3) confirming her marriage with Sagar on 15.05.2023. The petitioner is in custody since 03.03.2023 and she is not involved in any other offence. The petitioner has been wrongly implicated in the commission of alleged offence. The petitioner has deep roots in the society.

4. Learned State Counsel submits that police report has already been filed and charges are yet to be framed. He further submits that there are 16 witnesses.

5. Proviso to clause (i) & (ii) of sub-section (1) of Section 437 Cr.P.C. provides that the court may release on bail if a person accused of commission of offence punishable with death or imprisonment for life is 'under the age of sixteen years or is a woman or is sick or infirm'.

6. While adverting with bail to a woman, a two judge bench of Hon'ble Supreme Court in ***Satender Kumar Antil v. CBI; (2022) 10 SCC 51*** has observed:

*“69. Proviso to Section 437 of the Code mandates that when the accused is under the age of sixteen years, sick or infirm or being a woman, is something which is required to be taken note of. Obviously, the court has to satisfy itself that the accused*

*person is sick or infirm. In a case pertaining to women, the court is expected to show some sensitivity. We have already taken note of the fact that many women who commit cognizable offences are poor and illiterate. In many cases, upon being young they have children to take care of, and there are many instances when the children are to live in prisons. The statistics would show that more than 1000 children are living in prisons along with their mothers. This is an aspect that the courts are expected to take note of as it would not only involve the interest of the accused, but also the children who are not expected to get exposed to the prisons. There is a grave danger of their being inherited not only with poverty but with crime as well.”*

7. The petitioner is in custody since 03.03.2023 and she is not involved in any other offence, as confirmed by learned State counsel. Police report under Section 173 of Cr.P.C. stands filed, however, charges are yet to be framed. The prosecutrix has solemnized marriage with Sagar i.e. son of the petitioner and prosecutrix has furnished an affidavit (Annexure P-3) to this effect. The petitioner being a lady cannot be prosecuted for commission of offence punishable under Section 376 IPC. The Trial Court yet has to return definite findings on the disputed issues. There are 16 prosecution witnesses, thus, there is abysmally low possibility of conclusion of trial in near future.

8. 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.

9. If the petitioner or her family members/associates make any attempt to threat/intimidate the witnesses in the present case, the State would be at liberty to move an application for cancellation of bail granted by this order.

10. 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

25.05.2023  
Mohit Kumar

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