

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

223

CRM-M-26948-2023

Date of Decision: 31.05.2023

Irfan

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Sanyam Khetarpal, Advocate for the petitioner

Ms. Priyanka Sadar, AAG, Haryana

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 regular bail in FIR No.0339 dated 08.12.2022 under Sections 363, 366-A of Indian Penal Code, 1860 (for short '**IPC**') [Section 376 of IPC and Section 4 of Protection of Children from Sexual Offences Act, 2012 (for short '**POCSO Act**') added later on] registered at Police Station City Nuh, District Nuh.

2. The case of the prosecution is that father of prosecutrix lodged a complaint dated 08.12.2022 alleging that on 07.12.2022 he along with his family members were sleeping at his home and in the morning of 08.12.2022 at about 04:00 AM, he found his daughter missing from the house. He searched but could not find her. He made a call to Irfan on his mobile phone but it was found *switched off*. He apprehends that something wrong has been done with his daughter.

3. Learned counsel for the petitioner, *inter alia* contends that petitioner solemnized *Nikah* with prosecutrix on 09.12.2022. They filed *CRWP No.11807-2022* before this Court seeking protection of their lives and liberty. The said petition was disposed of vide order dated 19.12.2022 noticing statement of parents of the prosecutrix that they have no objection to the marriage and they will not interfere in the life of the petitioners. The prosecutrix was staying in Protection Home, Nuh from where her parents forcibly took her away. The mother of the petitioner has filed *CRWP No.4131 of 2023* seeking release of the prosecutrix. Statement of the prosecutrix under Section 164 Cr.P.C. was recorded wherein she categorically disclosed that she went to Uttar Pradesh at her own accord with Irfan and solemnized marriage with him. She further disclosed that she wants to reside with Irfan. No recovery is to be effected from the petitioner. The petitioner is in custody since 30.01.2023 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 Palwal. The petitioner has deep roots in the society. There is no possibility of flee from justice.

4. Learned State Counsel submits that police report has already been filed and charges stand framed. She further submits that out of 13 witnesses none has been examined. The petitioner is involved in the commission of grave offence, thus, no leniency is warranted and release of petitioner would hamper the trial.

5. The petitioner is in custody since 30.01.2023 and he is not involved in any other offence, as confirmed by learned State counsel. Police report under Section 173 of Cr.P.C. stands filed and charges stand framed. No recovery is to be effected from the petitioner. The petitioner has solemnized marriage with prosecutrix and they have sought protection from this Court. The parents of the prosecutrix had stated before this Court that they would not interfere in the lives of the petitioners therein. The prosecutrix in her statement under Section 164 Cr.P.C has confirmed her marriage with petitioner as well as the fact that she at her own accord left her home. The petitioner and prosecutrix belong to Muslim community, thus, question of permissible age of marriage is a disputed question. The Trial Court yet has to return definite findings on the disputed issues. There are 13 prosecution witnesses and till date none has been examined, thus, there is abysmally low possibility of conclusion of trial in near future. 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.

6. 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/Illaqah/Duty Magistrate concerned.

7. If the petitioner or his 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.

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

31.05.2023
Mohit Kumar

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