

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

212

CRM-M-27903-2022 (O&M)

Date of Decision: 10.05.2023

Sombir**...Petitioner****Versus****State of Haryana****...Respondent****CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL**

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

Ms. Dimple Jain, 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 concession of regular bail in FIR No.153 dated 17.04.2021 under Sections 376, 452, 506 & 354-D of Indian Penal Code, 1860 (for short 'IPC') [Section 376 IPC deleted later on and challan stands filed under Sections 376(2) (n), 452, 506 & 354-D of IPC] registered at Police Station Sadar Rohtak, District Rohtak.

2. The case of the prosecution is that on 17.04.2021, the complainant lodged a complaint alleging that her parents had passed away. Sombir son of Dilbag had been committing rape upon her for the last one year. In the month of June-July, 2020 he took her to hotel near Tehsil Rohtak and raped her. On several occasions, he came to her house and committed rape upon her. He threatened to kill her. He posted her

photographs on *Facebook* by making an ID in her name. FIR came to be registered.

3. Learned counsel for the petitioner, *inter alia* contends that it is a case of consensual relation. The prosecutrix is quite mature lady and she can understand her acts and omissions. The prosecutrix has already been examined. The petitioner is in custody since 18.04.2021 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 Rohtak. The petitioner has deep roots in the society. There is no possibility of flee from justice.

4. Custody certificate dated 09.05.2023 is taken on record. As per custody certificate, the petitioner is in custody since 18.04.2021 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. She further submits that out of 20 witnesses, 10 have already been examined which includes the prosecutrix. 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 18.04.2021 and he is not involved in any other offence. Police report under Section 173 of Cr.P.C. stands filed and charges stand framed. The prosecutrix stands examined, thus, there is no possibility of winning over witnesses. The prosecutrix and petitioner are major. The question of '*consent*' as contemplated by Section 90 read with Section 375 IPC is a

disputed question of fact and the Trial Court yet has to return definite findings on the disputed issues. There are 20 prosecution witnesses and till date only 10 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

10.05.2023
Mohit Kumar

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