

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

222

CRM-M-26933-2023

Date of Decision: 31.05.2023

Sandeep Sharma

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

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

Mr. A.P.S Tung, DAG, Punjab

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.60 dated 22.03.2022 under Sections 376-D of Indian Penal Code, 1860 (for short 'IPC') registered at Police Station Tripuri, District Patiala.

2. Learned counsel for the petitioner, *inter alia* contends that this Court vide order dated 12.05.2023 passed in CRM-M-49468-2022 has granted concession of regular bail to similarly situated co-accused. The relevant paragraphs of order dated 12.05.2023 read as under:-

“2. The case of the prosecution is that prosecutrix lodged a complaint alleging that she got married with Sohan Lal about 7 years back. On 04.03.2022, her husband came with two friends namely, Sandeep Sharma and Rambol Sharma. All the three persons were under the influence of liquor and they slept at first floor. She slept at 10:00 PM in her room

after taking medicine. Her husband's friends came to her room and at about 2:00AM, they forcibly made physical relation with her. She could not save herself because she was under the influence of drugs. She tried to wake up her husband but he was in deep sleep and did not get up.

3. Learned counsel for the petitioner, inter alia contends that alleged incident took place on 04.03.2022 whereas FIR came to be registered on 22.03.2022. There is no medical evidence. As per FIR, the husband of the prosecutrix was sleeping in the same house and he did not wake up when she was raped by petitioner. The prosecutrix stands examined. The petitioner is in custody since 24.03.2022 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 Kaithal. The petitioner has deep roots in the society. There is no possibility of flee from justice.

4. Custody certificate dated 10.05.2023 is taken on record. As per custody certificate, the petitioner is in custody since 24.03.2023 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 19 witnesses, 2 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 24.03.2022 and he is not involved in any other offence. There is no medical evidence. The Trial Court yet has to return

definite findings on the disputed issues. There are 19 prosecution witnesses and till date only 2 have been examined, thus, there is abysmally low possibility of conclusion of trial in near future. The prosecutrix stands examined, thus, there is no possibility of winning over or pressurizing her. 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/Illaq/Duty Magistrate concerned.”

3. Custody Certificate dated 30.05.2023 filed by respondent-State is taken on record. As per custody certificate, the petitioner is in custody since 24.03.2022 and he is not involved in any other crime.

4. Learned State counsel expressed his inability to controvert the afore-stated facts and especially the fact that role of the petitioner is at par with role of co-accused and he has been granted concession of regular bail.

5. In view of afore-stated order passed by this Court in the case of co-accused and involved 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/Illaq/Duty Magistrate concerned.

6. 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.

7. 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>