

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

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CRM-M-31647-2022 (O&M)

Date of Decision: 21.04.2023

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

Present:- Mr. Chanderhas Yadav, Advocate for the petitioner

Ms. Dimple Jain, AAG, Haryana
(assisted by SI Anju)Mr. Chajju Khan, Advocate for the complainant
*****JAGMOHAN BANSAL, J. (ORAL)**

1. The petitioner through instant petition under Section 439 Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') is seeking regular bail in FIR No.100 dated 28.05.2021 under Sections 376, 341 & 506 of Indian Penal Code, 1860 (for short 'IPC') registered at Police Station Nagina, District Nuh.

2. The case of the prosecution is that on 28.05.2021, prosecutrix filed a complaint alleging that on 23.05.2021 at about 09:30 PM, she had gone to bring water from tube well and while she was on the way, Aamir son of Usman and Ajru son of Unnas forcibly caught her and threw her water bucket and took her in a *Chopal*. As soon as she tried to raise noise, Ajru gagged her mouth and put a pistol on her. Thereafter, both of them committed rape upon her turn by turn.

The police conducted investigation and found Ajru innocent. The challan came to be presented against petitioner- Aamir.

3. Learned counsel for the petitioner, *inter alia* contends that as per FIR, petitioner and Ajru committed rape upon her whereas challan has been presented against petitioner which shows that prosecutrix had lodged false complaint against him. Despite repeated orders, the prosecutrix is not coming forward for her cross-examination. The petitioner is in custody since 30.11.2021. The petitioner 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 Nuh. The petitioner has deep roots in the society. There is no possibility of flee from justice.

4. Custody certificate dated 21.04.2023 is taken on record. Registry is directed to tag the same at appropriate place.

5. By order dated 27.03.2023, the State was directed to make its best efforts to make the prosecutrix present before the Trial Court for her examination and cross-examination.

6. Learned State Counsel fairly submits that prosecutrix is not coming forward for her examination before the Trial Court. She further submits that out of 14 prosecution witnesses, 5 have been examined. The petitioner is accused of commission of heinous crime.

7. Despite specific order of this Court and sincere efforts of State, the prosecutrix is not coming forward for her examination. The conduct of prosecutrix is *prima facie* supporting contention of the petitioner that prosecutrix had lodged false FIR against the petitioner.

8. The petitioner is in custody since 31.11.2021 and he is not involved in any other crime. As per prosecutrix, alleged rape was committed at a public place i.e. *Chopal* in the village. Co-accused Ajru has been found innocent. The prosecutrix is not coming forward for her examination and petitioner cannot be kept inside for indefinite period. The Trial Court yet has to return definite findings on the disputed issues. There are 14 prosecution witnesses and till date only 5 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.

9. 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.

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

21.04.2023
Mohit Kumar

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