

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

214+4

CRM-M-37034-2021

Date of Decision: 08.02.2023

Bir Kumar

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Nirmal Singh, Advocate for the petitioner
Ms. Dimple Jain, AAG, Haryana
Mr. Sachin Rai Vaid, Advocate for complainant

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner, through instant petition under Section 439 Cr.P.C., is seeking regular bail in FIR No.55 dated 30.01.2020 under Sections 365 of IPC (Section 6 of POCSO Act, Sections 328, 343, 366A, 370, 370A, 375, 376, 120-B of IPC and Sections 3, 4, 5, 6, 7 of Immoral Traffic Act added later on) registered at Police Station Sadar Thanesar, District Kurukshetra.

2. The case of the prosecution is that father of the prosecutrix on 30.01.2020 lodged complaint with the police alleging that his daughter aged 13 years has gone missing from their house on 27.01.2020. The prosecutrix was recovered on 19.05.2020 and thereafter statements of prosecutrix and her father was recorded on 19.05.2020. The police recorded multiple statements of the prosecutrix under Section

161 Cr.P.C. The prosecutrix in her subsequent statements disclosed name of different persons. The prosecutrix in her statement dated 29.11.2021 before the Trial Court disclosed that Bintu, Nixon and Manoj @ Manish put her in the car and took her away to a liquor shop near village Jhirbar. Nixon and Bintu committed rape with her and thereafter they took her away to Lucky Dhaba. The owner of Lucky Dhaba, namely, Ashok and his servant Bir Kumar telephonically called Kajal. Ashok took her away on motorcycle and dropped near fly over Pipli from where Kajal and Ravi took her away to Makanda Kheri. Kajal and Ravi used to take away her to hotels and used to force her to have sexual intercourse with customers. In the hotel, owner of the hotel and his servant Sandeep committed rape with her. One day she escaped from house of Kajal and reached bus stand where Sonu Khan met her. Sonu Khan took away her to Ganesh Colony and raped her. Sonu Khan thereafter took away her to a rented accommodation where owner of the house asked for Aadhaar Card. She disclosed owner of the house that Sonu had brought her forcefully. The owner of the house called police.

3. Learned counsel for the petitioner, *inter alia* contends that petitioner was working as servant at Lucky Dhaba where as per prosecution, the prosecutrix was brought. There is no allegation of commission of offence of rape against the petitioner still he is in custody since 23.07.2020. The prosecutrix during trial has not identified the petitioner. The petitioner being a poor person has been blindly implicated. There is no allegation of rape against the petitioner in the

statement under Section 164 Cr.P.C. as well statements under Section 161 Cr.P.C., though prosecutrix in her chief has made allegation of rape against the petitioner. 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 Kurukshetra. This Court has already granted concession of regular bail to two co-accused. 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 56 witnesses, 18 have already been examined which include prosecutrix. The prosecutrix was 13 years old, thus, it was not possible for her to identify each and every accused. The petitioner is involved in the commission of grave offence, thus, no leniency is warranted and release of petitioner would hamper the trial.

5. Learned counsel for the complainant has opposed the bail application on the score that the victim was aged about 12 years and 10 months at the time of occurrence. Her father is working as a labourer. She was illegally detained and subjected to prostitution for a long period of 3½ months. It cannot be expected from the victim that she would have remembered the names of each and every person who had sexually abused her during that period of time. The proceedings in the trial Court are going at a fair pace.

6. In the case in hand, anticipatory bail granted to co-accused-Manish alias Manoj was cancelled by Hon'ble Supreme Court vide order dated 06.05.2022 and thereafter, he was arrested. He has been granted concession of regular bail by this Court vide order dated 07.12.2022 passed in CRM-M-29853-2022. Similarly, Dimple Goel, owner of the hotel who is also a co-accused has been granted concession of regular bail vide order dated 17.12.2020 passed by this Court in CRM-M-36489-2020. The petitioner is in custody since 23.07.2020 and he is not involved in any other offence. The petitioner was a servant at Dhaba (eating place) and there seems no direct allegation of commission of offence of rape. There are 56 prosecution witnesses and till date only 18 witnesses have been examined, thus, there is abysmally low possibility of conclusion of trial in near future. The material witness i.e. prosecutrix stands examined. 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 tempering 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 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

08.02.2023
Mohit Kumar

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