

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

211

CRM-M-33738-2022 (O&M)

Date of Decision: 10.04.2023

Sapna

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Impinder Singh Dhaliwal, Advocate for the petitioner

Mr. Amish Sharma, AAG, Punjab
(assisted by ASI Surjit Singh)

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.88 dated 22.04.2022 under Sections 363, 366-A & 120-B 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 Malout, District Sri Muktsar Sahib.

2. The case of the prosecution is that complainant lodged a complaint alleging that Sapna wife of Pal Singh, Bhagwan Dass @ Bhola and Ajay Kumar @ Lalu, by hatching a criminal conspiracy, had enticed her daughter on the pretext of marriage with Ajay Kumar. Sapna is mother of Ajay Kumar. The date of birth of the victim is 15.10.2004.

The victim was recovered, however, she refused to get herself medically examined. Later on, the victim was found pregnant.

3. Learned counsel for the petitioner, *inter alia* contends that petitioner is in custody since 25.04.2022. There is no allegation of commission of rape against the petitioner and there is only allegation that he has abetted in eloping the prosecutrix with the co-accused. The prosecutrix as well as complainant-mother of the prosecutrix have already been examined as well as cross-examined. They have not supported the case of prosecution. The petitioner is not involved in any other offence. The petitioner is 55 years old lady and she has been wrongly implicated in the commission of alleged offence. The petitioner is permanent resident of District Sri Muktsar Sahib. The petitioner has deep roots in the society. There is no possibility of flee from justice.

4. Custody Certificate dated 08.04.2023 filed by respondent-State is taken on record. As per custody certificate, the petitioner is in custody since 25.04.2022 and she is not involved in any other offence.

5. Learned State Counsel on instructions from ASI Surjit Singh submits that police report has already been filed and charges stand framed. He further submits that there are 26 prosecution witnesses and till date 4 have been examined. The prosecutrix as well as her mother have not supported the case of prosecution. The petitioner is involved in

the commission of grave offence, thus, no leniency is warranted and release of petitioner would hamper the trial.

6. Proviso to clause (i) & (ii) of sub-section (1) of Section 437 Cr.P.C. provides that the court may release on bail if a person accused of commission of offence punishable with death or imprisonment for life is ‘under the age of sixteen years or is a woman or is sick or infirm’.

7. While advertizing with bail to a woman, a two judge bench of Hon’ble Supreme Court in ***Satender Kumar Antil v. CBI; (2022) 10 SCC 51*** has observed:

“69. Proviso to Section 437 of the Code mandates that when the accused is under the age of sixteen years, sick or infirm or being a woman, is something which is required to be taken note of. Obviously, the court has to satisfy itself that the accused person is sick or infirm. In a case pertaining to women, the court is expected to show some sensitivity. We have already taken note of the fact that many women who commit cognizable offences are poor and illiterate. In many cases, upon being young they have children to take care of, and there are many instances when the children are to live in prisons. The statistics would show that more than 1000 children are living in prisons along with their mothers. This is an aspect that the courts are expected to take note of as it would not only involve the interest of the accused, but also the children who are not expected to get exposed to the prisons. There is a grave danger of their being

inherited not only with poverty but with crime as well.”

8. In the case in hand, the petitioner is in custody since 25.04.2022. There are 26 prosecution witnesses and till date only 4 have been examined, thus, there is abysmally low possibility of conclusion of trial in near future. The prosecutrix and her mother have turned hostile. The co-accused Bhagwan Dass @ Bhola has already been granted concession of regular bail vide order dated 10.01.2023 passed by this Court. The petitioner is not involved in any other offence. 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

10.04.2023
Mohit Kumar

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