

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

239

CRM-M-36032-2022

Date of Decision: 24.02.2023

Narender Kumar Kaushik

...Petitioner

Versus

State of Haryana and Another

...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Aneeshh Chopra, Advocate for
Mr. Shekhar Verma, Advocate for the petitioner

Ms. Dimple Jain, AAG, Haryana

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.108 dated 02.06.2022 under Section 10 of Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act') read with Section 354 of Indian Penal Code, 1860 (for short 'IPC') (added later) registered at Women Police Station, Karnal.

2. The case of the prosecution is that on 02.06.2022, complainant lodged a complaint with police alleging that prosecutrix is staying with them and he is maternal uncle of the prosecutrix. The prosecutrix was not well since 31.05.2022 and her treatment was going with Shree Balaji Clinic, Sector 4, Karnal. Dr. Narender Kaushik was her doctor. On 01.06.2022, the prosecutrix was brought to hospital by him

and doctor put her on drip. He left for office and Dr. Kaushik molested and kissed on both cheeks of the prosecutrix.

3. Learned counsel for the petitioner, *inter alia* contends that prosecutrix in her cross-examination has admitted that on the date of alleged incident another girl patient was there and she was also put on drip. The father of said girl was in the hospital at that point of time. There was an attendant in the clinic at that point of time and he was looking after the patients. These facts confirm that there was no possibility of commission of alleged offence on the part of petitioner. The petitioner is a BAMS doctor and he has a long unblemished record. He is 49 years old and he has 21 years old daughter. The petitioner on the date of alleged incident scolded maternal aunt of the prosecutrix which resulted into alleged FIR. The petitioner is in custody since 23.06.2022. 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 Karnal. The petitioner has deep roots in the society. There is no possibility of flee from justice.

4. Custody certificate dated 23.02.2023 is taken on record. Registry is directed to tag the same at appropriate place. As per custody certificate, petitioner is not involved in any other offence and he is in custody for last 8 months.

5. Learned State Counsel submits that police report has already been filed and charges stand framed. She further submits that out of 9 witnesses only one stands examined. 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 a practising doctor and he is in custody since 23.06.2022. The prosecutrix stands examined, thus, there is no possibility of winning over or threatening of witness. The petitioner is not involved in any other offence and he is a 49 years old man. There are 9 prosecution witnesses and till date only one has 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 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.

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

24.02.2023
Mohit Kumar

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