

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

107+224

CRM-M-36916-2022 (O&M)

Date of Decision: 25.05.2023

Jatinder Kumar @ Lali**...Petitioner****Versus****State of Punjab****...Respondent****CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL**

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

Mr. Shiva Khurmi, AAG, Punjab
(assisted by ASI Narinder Singh)

JAGMOHAN BANSAL, J. (ORAL)**CRM-23721-2023**

Application for placing on record AnnexureS P-4 to P-6 is
allowed. The same are taken on record subject to just exceptions.
Registry is directed to tag at appropriate place.

CRM stands disposed of.

CRM-M-36916-2022

1. The petitioner, through instant petition under Section 439 of Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') is seeking concession of regular bail in FIR No.0157 dated 09.06.2022 under Sections 376, 377, 506, 120-B of Indian Penal Code, 1860 (for short 'IPC') and Sections 3 & 4 of Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act') registered at Police Station City Kharar, District S.A.S. Nagar Mohali.

2. The case of the prosecution is that complainant lodged a complaint alleging that she is 8th class pass and her parents have taken Panchayati divorce. Her maternal aunt took her away to Bathinda where she came in contact with Jaspal Kaur. On 01.06.2022, Jaspal Kaur told her that she will keep her at Mohali and look after her. On 01.06.2022, she arrived at Mohali and an unknown boy came to Mohali Bus Stand and took her away to a parlour at Kharar where they clicked her photographs. In the evening, a boy namely Ankit who has a Saloon at Ludhiana along with another boy took her away. At night she slept with unknown boy who had done nothing with her. On the next day at about 10-11 PM, Jaspal Kaur reached there who told her not to disclose anything to her maternal uncle and aunt. In the evening Ankit came and committed rape upon her without her consent after consuming liquor.

3. Learned counsel for the petitioner, *inter alia* contends that prosecutrix has been examined and she in her testimony has turned hostile qua Ankit against whom she made categorical allegation of rape. She has further made allegation of rape against the petitioner. There is no medical evidence against the petitioner. The petitioner is in custody since 15.06.2022 and he is involved in any other crime. The petitioner has been wrongly implicated in the commission of alleged offence. The petitioner is permanent resident of District S.A.S Nagar Mohali. The petitioner has deep roots in the society. There is no possibility of flee from justice.

4. Custody certificate dated 23.05.2023 is taken on record. As per custody certificate, the petitioner is in custody since 15.06.2023 and he is involved in another FIR under Section 13A of Gambling Act.

5. Learned State counsel submits that police report has already been filed and charges stand framed. He further submits that out of 23 witnesses, only one witness i.e. prosecutrix has been examined. He fairly submits that prosecutrix has turned hostile qua Ankit against whom she had made allegation of rape.

6. The petitioner is in custody since 15.06.2022. Police report under section 173 of Cr.P.C. stands filed, charges stand framed. The prosecutrix did not make allegation of rape against the petitioner at the time of registration of FIR. She made allegations against one boy namely, Ankit and she has turned hostile qua Ankit. The Trial Court yet has to return definite findings on the disputed issues. There are 23 prosecution witnesses and till date only one witness has been examined, thus, there is abysmally low possibility of conclusion of trial in near future. The material witness i.e. 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/Illaqa/Duty Magistrate concerned.

8. 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.

9. 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

25.05.2023
Mohit Kumar

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No