

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

224

CRM-M-40040-2022

Date of Decision: 18.04.2023

Sanjeev Alias Ankush

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

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

Ms. Trishanjali Sharma, DAG, 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.82 dated 30.04.2022 under Sections 376(2)(n), 354-A, 506 and 34 of Indian Penal Code, 1860 (for short 'IPC') registered at Women Police Station, Karnal.

2. Learned counsel for the petitioner, *inter alia* contends that there was no allegation of rape against the petitioner in the FIR. There was allegation of sending messages and assisting main accused. The petitioner is in custody since 06.07.2022 and he is not involved in any other offence. The prosecutrix stands examined and she has changed her statement before the Court and implicated the petitioner in the commission of alleged offence of rape. The prosecutrix was 37 years old lady and she had lodged FIR after 3 & ½ years from the date of commission of alleged offence. The police in its investigation did not find commission of offence punishable under Section 313 IPC. The police primarily found the petitioner guilty of

commission of offence under Section 354-A IPC. The prosecutrix in her statement, at the time of registration of FIR, did not allege commission of offence of rape by petitioner, however, she improved her subsequent statements and implicated the petitioner for commission of offence punishable under Section 376 IPC. The petitioner has been wrongly implicated in the commission of alleged offence. The petitioner is in custody since 06.07.2022 and he is not involved in any other offence. The petitioner is permanent resident of District Kurukshetra. The petitioner has deep roots in the society. There is no possibility of flee from justice.

3. Learned State Counsel submits that police report has already been filed and charges stand framed. She further submits that out of 17 witnesses only prosecutrix has been examined. The petitioner is involved in the commission of grave offence, thus, no leniency is warranted and release of petitioner would hamper the trial.

4. In the case in hand, as per custody certificate dated 25.03.2023, the petitioner is in custody since 06.07.2022 and he is not involved in any other crime. The prosecutrix has already been examined and as per cross-examination, she has primarily made allegations against co-accused Rakesh Kumar. The prosecutrix at the time of alleged offence was 37 years old, thus, she was quite competent to understand result of her act & omissions and she could take appropriate action without delay. The Trial Court yet has to return definite findings on the disputed issues. There are 17 prosecution witnesses and till date only prosecutrix 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.

5. 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.

6. 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

18.04.2023
Mohit Kumar

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