

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

212

CRM-M-43244-2022

Date of Decision: 16.02.2023

**Rajni****...Petitioner****Versus****State of Haryana****...Respondent****CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL**

Present:- Mr. Shiv Kumar, Advocate for the petitioner

Ms. Dimple Jain, AAG, Haryana

**JAGMOHAN BANSAL, J. (ORAL)**

1. The petitioner, through instant petition under Section 439 Cr.P.C., is seeking regular bail in FIR No.88 dated 23.05.2022 under Sections 376, 120-B and 506 of IPC, registered at Police Station Bhupani, District Faridabad
2. The case of the prosecution is that prosecutrix lodged complaint with the police alleging that she solemnized marriage with Sachin on 24.02.2011 according to Hindu rites and ceremonies and two children were born out of this wedlock. On 25.04.2022 at about 12:30 PM she and her mother-in-law were present at home. Anup Singh alias Lallu stated to be her *Tau* entered in her room and committed rape upon her. He paid a sum of Rs.5 Lacs in cash for this purpose to her mother-in-law. Her mother-in-law locked the door from outside and opened it after 20-25 minutes. Anup Singh alias Lallu told her that her mother-in-law had done this work with him many times.

3. Learned counsel for the petitioner, *inter alia* contends that FIR was registered under Section 376, 120-B and 506 IPC and petitioner being lady could not be implicated in any one of these sections. Contention of the petitioner is supported by a Two Judge Bench judgment of Hon'ble Supreme Court in ***Priya Patel Versus State of M.P. and Another; (2006) 6 Supreme Court Cases 263***. The petitioner is in custody since 27.05.2022 and she is not involved in any other offence. The prosecutrix was examined by the Trial Court on 27.01.2023 and she has been declared hostile. The petitioner has been wrongly implicated in the commission of alleged offence. The petitioner is permanent resident of District Faridabad. The petitioner has deep roots in the society. There is no possibility of flee from justice.

4. Custody certificate dated 07.12.2022 is already on record and as per custody certificate, the petitioner is not involved in any other offence.

5. Learned State counsel submits that police report has already been filed and charges stand framed. She further submits that out of 15 witnesses, 2 witnesses have been examined which include the prosecutrix. She concedes that prosecutrix stands declared hostile. The petitioner is not involved in any other offence, however, she has committed serious offence, thus, she does not deserve leniency.

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 a 60 years old lady and she is not involved in any other offence. The prosecutrix has not supported case of the prosecution and she has been declared hostile.

There are 15 witnesses and only 2 witnesses which includes the prosecutrix have 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.

9. 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.

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

16.02.2023  
Mohit Kumar

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