

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

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CRM-M-43810-2022

Date of Decision: 20.04.2023

Jangeshwar Ram**...Petitioner****Versus****State of Punjab****...Respondent****CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL**

Present:- Mr. R.K. Arya, Advocate for the petitioner

Mr. Amish Sharma, AAG, Punjab
(assisted by ASI Vipin Kumar)

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 concession of regular bail in FIR No.67 dated 21.04.2022 under Sections 363 & 366-A of Indian Penal Code, 1860 (for short '**IPC**') [Sections 376 & 120-B of IPC and Section 6 of Protection of Children from Sexual Offences Act, 2012 (for short '**POCSO Act**') added later on] registered at Police Station Division No.5, Jalandhar, District Jalandhar.

2. The case of the prosecution is that complainant lodged a complaint alleging that he is a labourer and having four children. Ajay son of Ishnath Parshad and Jaggu used to visit his home. They came in the contact of his family members. On 16.04.2022, when he was present at home, his daughter on the pretext of purchasing something had left home and did not return. He went to home of Ajay and Jaggu who were

not present at their home. Their mobiles were found '*switched off*'. They have enticed his daughter on the pretext of marriage.

On 29.04.2022, statement of the prosecutrix was recorded under Section 164 Cr.P.C. wherein she did not utter even a single word against the petitioner except stating that she had left her home as her father used to give her beatings. She had left her home at her own accord. On 16.07.2022, another statement of the prosecutrix under Section 164 Cr.P.C. was recorded wherein she disclosed that petitioner abetted Ajay in kidnapping her. She was kept in a rented accommodation in Bihar where Ajay repeatedly committed rape. Jaggu financially helped Ajay.

3. Learned counsel for the petitioner, *inter alia* contends that there is no allegation of rape against the petitioner. The prosecutrix had eloped with co-accused-Ajay. The prosecutrix stands examined and she has turned hostile. The prosecutrix in her first statement under Section 164 Cr.P.C. did not name the petitioner. In her second statement, under the influence of her parents, she had named the petitioner. The petitioner is in custody since 25.05.2022 and he is not involved in any other offence. The petitioner has been wrongly implicated in the commission of alleged offence. There is no possibility of flee from justice.

4. Custody certificate dated 19.04.2023 is taken on record. As per custody certificate, the petitioner is in custody since 25.05.2022 and he is not involved in any other offence.

5. Learned State Counsel submits that police report has already been filed and charges stand framed. He further submits that out of 21 witnesses, 5 have already been examined which includes prosecutrix. He fairly confirms that prosecutrix has turned hostile. He further submits that main accused Ajay has till date not been arrested.

6. In the case in hand, the prosecutrix has turned hostile and she had not named petitioner in her first statement recorded under Section 164 Cr.P.C. There is no allegation of rape against the petitioner. It is co-accused Ajay against whom there are allegations of rape. The petitioner is in custody since 25.05.2022 and he is not involved in any other offence. The Trial Court yet has to return definite findings on the role of the petitioner qua alleged offence. There are 21 prosecution witnesses and till date only 5 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.

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. 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

20.04.2023
Mohit Kumar

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