

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

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CRM-M-44187-2022

Date of Decision: 13.02.2023

Mohit Kumar @ Mohit

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. S.K. Chaudhary, Advocate for the petitioner

Mr. Digvijay Nagpal, AAG, Punjab

JAGMOHAN BANSAL, J. (ORAL)

1. The petitioner through instant petition under Section 439 Code of Criminal Procedure, 1973 is seeking regular bail in FIR No.129 dated 31.07.2022 under Sections 323, 354-A, 354-D, 506, 341, 34 of Indian Penal Code, 1860 (for short 'IPC') read with Section 12 of Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act') registered at Police Station Division No.2, Pathankot.

2. Reply by way of affidavit dated 11.02.2023 of Lakhwinder Singh, Deputy Superintendent of Police, Sub-Division City, District Pathankot filed by respondent-State is taken on record. Registry is directed to tag the same at appropriate place.

3. The case of the prosecution is that complainant approached police authorities alleging that her daughter is studying in KV No.1, Air Force Station Pathankot and her date of birth is 07.01.2007. On 29.07.2022, at about 02:20 PM, she was going to her house after leaving

the school and when she reached Dhaka Chowk, Pathankot, two boys came on a motorcycle bearing No. PB-35-AH-2876. They stopped her daughter on the way and pillion rider, namely, Mohit son of Rajesh caught hold of her arm and tried to make her sit on the motorcycle. When she resisted, Mohit started slapping her and after taking out *Dattar* from his *Dub* tried to hit her, but the shopkeepers and passers-by rescued her and both of them fled from the spot.

4. Learned counsel for the petitioner, *inter alia* contends that petitioner was student of 10+2 and prosecutrix was student of 10+1 and they both were studying in the same school. They were good friends. They on many occasions attended parties. The petitioner has not committed alleged offence which is evident from the fact that FIR was registered against petitioner as well as Diljit Singh and complainant in the trial against co-accused Daljit Singh has stated that he was not present at the time of alleged incident. This belies entire story of the prosecution. The petitioner is a 20 years old innocent boy. He belongs to a reputed family and the present trial is spoiling his career. The petitioner has been wrongly implicated in the commission of alleged offence. The maximum sentence prescribed under Sections 354-A, 354-D of IPC and Section 12 of POCSO Act is 3 years. The petitioner is in custody since 31.07.2022. The petitioner is permanent resident of District Pathankot. The petitioner has deep roots in the society. There is no possibility of flee from justice.

5. Custody Certificate dated 10.02.2023 is taken on record. Registry is directed to tag the same at appropriate place.

6. Learned State Counsel submits that police report has already been filed and charges stand framed. He further submits that there are 12 witnesses and till date no witness 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.

7. In the case in hand, the petitioner was arrested on 31.07.2022. The maximum sentence prescribed for the commission of alleged offence is 3 years. The petitioner is a 20 years old boy and he was a school mate of prosecutrix. The petitioner is not involved in any other offence. There are 12 prosecution witnesses and till date no witness 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 tempering the evidences or winning over/threatening the witnesses.

8. 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/Illaqa/Duty Magistrate concerned.

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

13.02.2023
Mohit Kumar

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