

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

213

CRM-M-44935-2022

Date of Decision: 13.03.2023

Ram Kumar Alias Ashish**...Petitioner**

Versus

State of Punjab**...Respondent****CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL**

Present:- Mr. Prateek Sodhi, Advocate for the petitioner

Mr. Amish Sharma, AAG, Punjab
(assisted by ASI Rashpal Singh)

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.79 dated 13.07.2022 under Sections 363 & 366 of Indian Penal Code, 1860 (for short 'IPC') registered at Police Station Kathunangal, District Amritsar.

2. The case of the prosecution is that father of victim made a complaint to the police averring that he is an agriculturist. He has two children and his eldest daughter is 16 years and 8 months old. She is studying in class 10+2 in Government Senior Secondary Samrat School, Majitha. On 11.07.2022 at about 08:00 AM, his daughter went to school but she did not return. He went to the house of Ashish son of Ramesh

who was doing job in the private hospital. Ashish's uncle Brahmaji told him that he does not know about Ashish and where he has gone. His daughter has taken away her 10th Class Certificate, Birth Certificate, Aadhaar Card and Rs.700/-. The victim was recovered and petitioner was arrested on 28.07.2022.

3. Learned counsel for the petitioner, *inter alia* contends that from the perusal of statement of victim under Section 164 Cr.P.C., it is quite evident that victim was working in a hospital with the petitioner and she used to live with the petitioner. She left her home on 11.07.2022 and visited various places i.e. Katra, Mata Vaishno Devi, Mathura, Agra, Delhi and Mumbai. While she was planning to go to Calcutta, she was caught and brought to Jalandhar. The maximum sentence prescribed under Section 363 of IPC is 7 years and under Section 366 of IPC is 10 years. The petitioner is in custody since 28.07.2022 and is not involved in any other offence. The petitioner has been wrongly implicated in the commission of alleged offence. The petitioner is permanent resident of District Amritsar. The petitioner has deep roots in the society. There is no possibility of flee from justice.

4. Custody certificate dated 11.03.2023 is taken on record. Registry is directed to tag the same at appropriate place.

5. Learned State Counsel submits that police report has already been filed and charges stand framed. He further submits that out of 23

witnesses, none 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.

6. In the case in hand, the prosecutrix in her statement under Section 164 Cr.P.C. has not supported the case of the prosecution. She has not made any allegation against the petitioner. There are 23 prosecution witnesses and till date no one has been examined, thus, there is abysmally low possibility of conclusion of trial in near future. The petitioner is in custody since 28.07.2022 and he is not involved in any other criminal case. The prosecutrix stands recovered, thus, gravity of offence punishable under Section 366-A stands diluted. There is no allegation of rape or outrage of modesty of the victim. 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 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

13.03.2023
Mohit Kumar

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