

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

105+219

CRM-M-47955-2022 (O&M)
Date of Decision: 10.02.2023

Manjit Kumar

...Petitioner

Versus

The State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Dhruv Gupta, Advocate for the petitioner

Mr. Digvijay Nagpal, AAG, Punjab
(assisted by ASI Satnam Singh)

JAGMOHAN BANSAL, J. (ORAL)

CRM-3753-2023

Application for placing on record MLR dated 19.07.2021
(Annexure P-3) of the prosecutrix is allowed. The same is taken on
record. Registry is directed to tag at appropriate place.

CRM stands disposed of.

CRM-M-47955-2022

1. The petitioner through instant petition under Section 439
Code of Criminal Procedure, 1973, is seeking regular bail in FIR No.140
dated 17.07.2021 (Annexure P-1) under Sections 376 & 506 of Indian
Penal Code, 1860 (Section 4 of Protection of Children from Sexual
Offences Act, 2012 added later on) registered at Police Station Tibba,
District Police Commissionerate, Ludhiana. The Trial Court has framed

charges under Section 6 of POCSO Act and in the alternative, Sections 376(3)/506 of IPC.

2. The case of the prosecution is that prosecutrix made a statement before police authorities to the effect that she has six brothers and her father is a labourer. Her mother used to do household work. On 15.07.2021 at about 11:00 PM, when she was going to house of her maternal aunt (*massi*) one Manjit Singh, who was residing on rent near to their house met her on the way and told her to get some eatables. She went with him and on the way, he offered her cold drink. After drinking cold drink, she got unconscious. He took away her to a vacant plot at Street No.5 Partap Nagar, Ludhiana where he started committed wrong act with her but she re-gained conscious. After committing wrong act with her, he dropped her at home. When she suffered pain in stomach she disclosed the entire incident to her mother.

3. Learned counsel for the petitioner, *inter alia* contends that as per FSL report, hymen of the prosecutrix is intact and DNA report is not supporting case of the prosecution. The prosecutrix is close relative of the petitioner and due to financial dispute she has made allegations against the petitioner. The prosecutrix has already been examined as well as cross-examined. The petitioner in custody since 18.07.2021. The petitioner is not involved in any other offence. The petitioner has been wrongly implicated in the commission of alleged offence.

4. Custody Certificate dated 09.02.2023 is taken on record. Registry is directed to tag the same at appropriate place.

5. Learned State Counsel fairly concedes that medical report is not supporting case of the prosecution even though Section 376 of IPC and Section 6 of POCSO Act have been invoked. The prosecutrix stands examined as well cross-examined and she has supported case of the prosecution. He further submits that out of 11 witnesses, 1 witness i.e. the prosecutrix has been examined.

6. In the case in hand, the petitioner is in custody since 18.07.2021. The medical record is not supporting case of the prosecution. The prosecutrix had claimed that she was having pain in stomach whereas medical record is not supporting the case of the prosecution. There are 11 prosecution witnesses and till date only 1 witness has been examined, thus, there is abysmally low possibility of conclusion of trial in near future. The material witness i.e. prosecutrix stands examined. 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;

In view of the aforestated 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.

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

10.02.2023
Mohit Kumar

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