

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

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CRM-M-48935-2022

Date of Decision: 03.03.2023

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

Present:- Ms. Jasneet Mehra, Advocate for
Mr. G.C. Sharma, Advocate for the petitioner
Ms. Dimple Jain, AAG, Haryana

JAGMOHAN BANSAL, J. (ORAL)

1. The petitioner, through instant petition under Section 439 of Code of Criminal Procedure, 1973 (for short '**Cr.P.C.**') is seeking regular bail in FIR No.68/2021 dated 19.06.2021 registered under Sections 34, 341, 354-A, 363, 366A of Indian Penal Code, 1860 (for short '**IPC**') and Section 8 of Protection of Children from Sexual Offences Act, 2012 (for short '**POCSO Act**') registered at Police Station GRP, Faridabad.

2. The case of prosecution is that prosecutrix lodged a complaint with police alleging that on 06.06.2021 at about 11:00 PM, she left her house in anger and went to her friend's house in Bangalore. She stayed there for about one week and on 12.06.2021 went to Nagpur and stayed there for one week. On 17.06.2022, she went to Delhi via train and where Kunal and Anil met her and took away Rs.2,000/- from

her. They took her to a hotel with bad intention. The Manager of the hotel did not give them room because she was minor. At 11:30 PM, she came back to the Railway Station and sat in the waiting room of the Railway Station. Three persons in police dress came to her and started touching and molesting her in a filthy way. On 19.06.2022 at 10:30-11:00 AM, three persons again came and started teasing her with bad intention. They told her to accompany them to hotel or else they will put her in jail.

3. Learned counsel for the petitioner, *inter alia* contends that prosecutrix has primarily made allegations against three persons who were in police uniform whereas petitioner has been arrested and he is in custody since 01.07.2022. There is no allegation of even attempt to commit rape. The FIR has been registered under Sections 341, 354-A, 363, 366-A of IPC read with Section 34 of IPC and Section 8 of POCSO Act. The prosecutrix at her own choice left her home and stayed at different places. The petitioner met prosecutrix in the train and both of them visited to a hotel. The Hotel Manager did not give them room, thus, they came back to the Railway Station. From the perusal of FIR, it comes out that there was no allegation of touching the prosecutrix on the part of the petitioner. The prime allegation against the petitioner was that he has taken away Rs.2,000/- from the prosecutrix and he took her away to a hotel. The police authorities have saved GRP officials and put the petitioner behind the bars even though no offence is made out against the petitioner under Section 363 and 366A of IPC. The offence under

Section 341 and 354A are bailable. The maximum sentence prescribed under Section 5 of POCSO Act is 8 years. 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 02.03.2023 is taken on record. Registry is directed to tag the same at appropriate place. As per custody certificate, the petitioner is in custody since 01.07.2022 and he is not involved in any other offence.

5. Short reply by way of affidavit dated 02.03.2023 of Sangeeta Kalia, I.P.S., Superintendent of Police, Railways, Haryana, Ambala Cantt., filed on behalf of respondent-State is taken on record. Registry is directed to tag the same at appropriate place.

6. As per said reply, during investigation it has been found that three persons who are alleged to be police officials in the FIR are not actually police officials, thus, it is not possible to take action against any police official. An identification parade was also conducted but no police official was found guilty.

7. Learned State Counsel submits that police report has already been filed and charges stand framed. She further submits that out of 21 witnesses, 2 witnesses have already been examined which includes the prosecutrix.

8. In the case in hand, the petitioner was arrested on 01.07.2022 and he is not involved in any other offence. The prosecutrix had left her home at her own accord many weeks prior to meeting the petitioner in a train, thus, *prima facie* offence under Section 363 and 366A is not made out against the petitioner. The maximum sentence prescribed under Section 8 of POCSO Act is 5 years and petitioner has already suffered incarceration of 8 months. There are 21 prosecution witnesses and till date only two have 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 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

03.03.2023
Mohit Kumar

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