

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

215

CRM-M-50248-2022

Date of Decision: 10.04.2023

Poonam

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Sanchit Punia, Advocate for the petitioner

Ms. Dimple Jain, AAG, Haryana

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.45 dated 08.06.2022 under Sections 376, 506, 201 & 120-B of Indian Penal Code, 1860 (for short 'IPC') registered at Women Police Station Hansi.

2. The case of the prosecution is that prosecutrix lodged a complaint against Naresh son of Phool Singh and Poonam Rani alleging that she and her real sister Poonam used to work in the Photostat shop of Naresh at Railway Station, Hansi. Naresh forcibly made physical relations with her and Poonam made video. Naresh and Poonam pressurized her to shoot a video with her father. On the pretext of fly being entered in her shirt, she asked her father to put off her shirt.

Poonam clicked video of this incident. Naresh and Poonam got solemnized her marriage with Sunil Kumar, however, after some time, they pressurized her to seek divorce from Sunil Kumar.

3. Learned counsel for the petitioner, *inter alia* contends that petitioner are three sisters. Petitioner herein is real sister of the prosecutrix who on account of personal disputes between the sisters have dragged the petitioner in the present FIR. No video has been recovered. The prosecutrix, as per cross-examination, was working with Naresh as Office Reporter who was running a DPS News Channel on Youtube. There was no Photostat business. The third sister of the petitioner has lodged FIR against their father and prosecutrix. The trial qua said FIR is still pending. The petitioner being lady cannot be implicated for commission of alleged offence punishable under Section 376 IPC and there is no recovery of alleged video which belies story of the prosecutrix. The petitioner is in custody since 22.06.2022 and she 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 Bhiwani. There is no possibility of flee from justice.

4. Custody certificate dated 08.04.2023 is taken on record. As per custody certificate, the petitioner is not involved in any other offence and she is in custody since 22.06.2022.

5. Learned State Counsel submits that police report has already been filed and charges stand framed. She further submits that out of 14 witnesses only one witness i.e. prosecutrix 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. Proviso to clause (i) & (ii) of sub-section (1) of Section 437 Cr.P.C. provides that the court may release on bail if a person accused of commission of offence punishable with death or imprisonment for life is 'under the age of sixteen years or is a woman or is sick or infirm'.

7. While advertizing with bail to a woman, a two judge bench of Hon'ble Supreme Court in ***Satender Kumar Antil v. CBI; (2022) 10 SCC 51*** has observed:

“69. Proviso to Section 437 of the Code mandates that when the accused is under the age of sixteen years, sick or infirm or being a woman, is something which is required to be taken note of. Obviously, the court has to satisfy itself that the accused person is sick or infirm. In a case pertaining to women, the court is expected to show some sensitivity. We have already taken note of the fact that many women who commit cognizable offences are poor and illiterate. In many cases, upon being young they have children to take care of, and there are many instances when the children are to live in prisons. The statistics would show that more than 1000 children are living in prisons along with their mothers. This is an

aspect that the courts are expected to take note of as it would not only involve the interest of the accused, but also the children who are not expected to get exposed to the prisons. There is a grave danger of their being inherited not only with poverty but with crime as well.”

8. In the case in hand, the petitioner is in custody since 22.06.2022 and she is not involved in any other offence. The petitioner is real sister of prosecutrix and there is no recovery of alleged video. The sisters have lodged FIRs against each other including their father. The Trial Court yet has to return definite findings on the disputed issues. There are 14 prosecution witnesses and till date only prosecutrix 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 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 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.

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

10.04.2023
Mohit Kumar

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