

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

106+220

CRM-M-52076-2022 (O&M)

Date of Decision: 10.02.2023

Robin

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Rajnikant Upadhyay, Advocate for the petitioner

Ms. Dimple Jain, AAG, Haryana

JAGMOHAN BANSAL, J. (ORAL)

CRM-5131-2023

Application for placing on record Annexure P-9 to P-13 is allowed. The said annexures are taken on record. Registry is directed to tag the same at appropriate place.

CRM stands disposed of.

CRM-M-52076-2022

1. The petitioner, through instant petition under Section 439 Code of Criminal Procedure, 1973 is seeking regular bail in FIR No.228 dated 14.05.2022 under Sections 4 & 6 of Protection of Children from Sexual Offences Act, 2012 and Sections 328, 376, 376D & 506 of Indian Penal Code, 1860 registered at Police Station Sadar, Sonipat.

2. The case of the prosecution is that on 14.05.2022, father of the prosecutrix came to Police Station and lodged a complaint alleging that he has five children. His one daughter is 16 years old and she on

13.05.2022 left home without informing anyone. At around 10-11 PM, they succeeded to contact her at her mobile number and came to know that she was present near Bali Toll Plaza, District Jhajjar. They immediately reached at the spot to bring her back. She was in intoxicated condition. She disclosed that Monu called her at Amazon company situated at Bahalgarh on the pretext of getting job. She reached there by riding her own motorcycle. Monu made her to drink beer after which Monu and Gulzar committed rape upon her in a truck. She also disclosed that on earlier occasions, Harsh and Umesh committed rape upon her. She further disclosed that Ajay on other occasions committed rape upon her.

3. Learned counsel for the petitioner, *inter alia* contends that co-accused Harsh and Umesh stand released on regular bail by Sessions Court. The prosecutrix, her father-complainant and mother have turned hostile. The prosecutrix before the Trial Court has disclosed her age 19 years. As per FIR, she was carrying mobile and she had gone out of home on her own motorcycle which indicates that she was not 16 years old. The petitioner is in custody since 15.05.2022. The petitioner is not involved in any other offence. The petitioner has been wrongly implicated in the commission of alleged offence. The petitioner has deep roots in the society. There is no possibility of flee from justice.

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 submits that there are 26 witnesses and till date only 3 witnesses i.e. prosecutrix and her parents have been examined. She further submits that it is factually correct that prosecutrix and her parents have turned hostile. The co-accused stand released on regular bail by Sessions Court.

6. In the case in hand, the petitioner is in custody since 18.05.2022 and he is not involved in any other case. The prosecutrix and her parents have been examined and they have turned hostile. The conduct of prosecutrix indicates that she was not 16 years old at the time of alleged incident. Two co-accused have already been granted concession of regular bail by Sessions Court. There are 26 prosecution witnesses and till date only 3 have 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.

7. In view of 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/Illaqa/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

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No