

CRM-M-56860-2022

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

103+213

CRM-M-56860-2022 (O&M)

Date of Decision: 11.05.2023

Rajvir Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Naresh Kumar Chokar, Advocate with
Mr. G.S. Dhaliwal, Advocate for the petitioner

Mr. Shiva Khurmi, AAG, Punjab
(assisted by ASI Dalvir Singh)

Mr. Yash Pal Gupta, Advocate for the complainant

JAGMOHAN BANSAL, J. (ORAL)

CRM-21317-2023

Application for placing on record Annexures P-10 & P-11 is allowed. The same are taken on record subject to just exceptions. Registry is directed to tag at appropriate place.

CRM stands disposed of.

CRM-M-56860-2022

1. The petitioner through instant petition under Section 439 of Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') is seeking concession of regular bail in FIR No.91 dated 12.08.2022 under Sections 354, 376, 506 & 511 of Indian Penal Code, 1860 (for short 'IPC') registered at Police Station Mullanpur, District S.A.S. Nagar, Mohali.

2. The case of the prosecution is that complainant-Gurmeet Singh lodged a complaint averring that he solemnized marriage with Amrit Kaur on 21.02.1999 and two daughters were born from this wedlock. Petitioner-accused is driver of his wife. The petitioner and his wife came close to each other. His daughter has shown him photographs, *Whatsapp* and *Facebook* chats between petitioner and his wife. On 11.03.2022, the petitioner entered bedroom of his daughter and attempted to commit rape upon her.

3. Learned counsel for the petitioner, *inter alia* contends that complainant-father of prosecutrix is involved in multiple criminal cases. The complainant and his wife had filed multiple cases against each other. The petitioner is driver of wife of the complainant, thus, he has been implicated. The prosecutrix has informed Investigating Officer that she does not want to pursue the matter. The FIR was lodged after 5 months from the date of alleged incident. The petitioner is in custody since 17.08.2022 and no other criminal case is pending against him. The petitioner is having two minor daughters and he has no source of income, thus, his entire family is forced to face starvation on account of litigation between complainant and his wife. The petitioner has been wrongly implicated in the commission of alleged offence. There is no possibility of flee from justice.

4. Custody certificate dated 10.05.2023 is taken on record. As per custody certificate, the petitioner is in custody since 17.08.2022 and he is not involved in any other criminal case.

5. Status report by way of affidavit dated 10.05.2023 of Dharamvir Singh, P.P.S., Deputy Superintendent of Police, Sub-Division, Kharar-II, District S.A.S. Nagar (Mohali) filed on behalf of respondent-State is taken on record. Registry is directed to tag the same at appropriate place. As per status report, the prosecutrix has refused to join investigation and she has sent Whatsapp message to the Investigating Officer that she does not want to pursue the matter.

6. Learned State counsel submits that police report has already been filed and charges are yet to be framed.

7. Learned counsel for the complainant submits that Whatsapp messages of the prosecutrix are irrelevant. The petitioner has committed serious offence, thus, he does not deserve any leniency by this Court.

8. In the case in hand, the petitioner is in custody since 17.08.2022 and he is not involved in any other criminal case. Police report under Section 173 of Cr.P.C. stands filed, however, charges are yet to be framed, thus, there is no possibility of conclusion of trial in near future. The victim is not interested to pursue the matter. The petitioner is having two minor daughters and he is a driver by profession. The Trial Court yet has to return definite findings on the disputed issues. 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

11.05.2023
Mohit Kumar

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