

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

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CRM-M-54376-2022

Date of Decision: 05.05.2023

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

Present:- Mr. Abhimanyu Kalsy, Advocate for the petitioner

Ms. Priyanka Sadar, 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 concession of regular bail in FIR No.316 dated 06.07.2021 under Sections 363, 366-A & 376(3) of Indian Penal Code, 1860 (for short '**IPC**') and Section 4(2) & 17 of Protection of Children from Sexual Offences Act, 2012 (for short '**POCSO Act**') registered at Police Station Civil Lines, District Kaithal.

2. The case of the prosecution is that a complaint was filed before the police alleging that complainant has one daughter and three sons. The complainant further averred that his daughter on 06.07.2021 at around 04:30 PM went for studying at tuition, however, she did not come back. She searched for her but could not find out her. The FIR was registered under Sections 363 & 366-A of IPC. The prosecutrix was later on recovered and her statements under Section 161 as well as Section

164 Cr.P.C. were recorded. The prosecutrix was subjected to medical examination.

3. Learned counsel for the petitioner, *inter alia* contends that in the medical examination, neither human semen was detected nor there is observation regarding penetrative assault. No injury marks were found on the person of the prosecutrix. The petitioner is in custody since 21.07.2021 and he is not involved in any other case. The prosecutrix in her different statement has taken different stand. The prosecutrix stands examined before Trial Court. The petitioner has been wrongly implicated in the commission of alleged offence. The petitioner is permanent resident of District Kaithal. The petitioner has deep roots in the society. There is no possibility of flee from justice.

4. As per custody certificate dated 22.02.2023 (which is already on record), the petitioner is in custody since 22.07.2021 and he is not involved in any other crime.

5. Learned State Counsel submits that police report has already been filed and charges stand framed. She further submits that out of 19 witnesses, 4 have already been examined which includes prosecutrix. She fairly confirms that there is no medical evidence of penetrative act, however, the petitioner is involved in the commission of grave offence, thus, no leniency is warranted and release of petitioner would hamper the trial.

6. In the case in hand, the petitioner is in custody since 22.07.2021 and he is not involved in any other offence. The prosecutrix stands examined and she in her cross had confirmed that she was regularly talking to the petitioner. She was regularly using social platforms to talk to the petitioner. In the medical report, no evidence of penetrative act has been found. The Trial Court yet has to return definite findings on the disputed issues. There are 19 prosecution witnesses and till date only 4 have been examined, thus, there is abysmally low possibility of conclusion of trial in near future. The material witness i.e. prosecutrix stands examined, thus there is no possibility of winning over of the witness. 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.

7. 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/Illaq/Duty Magistrate concerned.

8. 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

05.05.2023
Mohit Kumar

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