

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

215

CRM-M-56313-2022

Date of Decision: 25.04.2023

Sandeep

...Petitioner

Versus

State of Haryana

...Respondent

**CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL**

Present:- Mr. Rahul Jaswal, Advocate for the petitioner

Ms. Dimple Jain, AAG, Haryana

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**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 concession of regular bail in FIR No.539 dated 19.07.2021 under Section 365 of Indian Penal Code, 1860 (for short 'IPC') [Sections 363, 366, 376(3)(2)(n) of IPC and Section 6 of Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act') added later on] registered at Police Station Quilla Panipat, Distric Panipat.

2. The case of the prosecution is that on 19.07.2021, father of the victim lodged a complaint alleging that his daughter, who was major at the time of incident, has gone away from home without informing anyone. On the basis of complaint, FIR under Section 365 IPC came to be registered. The victim was recovered on 19.07.2021 and her statement under Section 164 Cr.P.C. was recorded and she was got Medico Legally examined. The petitioner was arrested on 26.07.2021.

3. Learned counsel for the petitioner, *inter alia* contends that complainant had falsely deposed before police authorities that his daughter is 15 years old whereas she was more than 18 years old. The birth certificate dated 01.03.2023 issued by competent authority, the authenticity of which stands confirmed by learned State counsel, confirms that victim at the time of alleged offence was 18 years and 3 months. The victim and complainant stand examined and they have turned hostile. The prosecutrix in her statement under Section 164 Cr.P.C had not implicated the petitioner. The petitioner is in custody since 26.07.2021. The petitioner has been wrongly implicated in the commission of alleged offence. The petitioner is permanent resident of District Panipat. The petitioner has deep roots in the society. There is no possibility of flee from justice.

4. Status report by way of affidavit dated 22.04.2023 of Mayank Mishra, I.P.S., Assistant Superintendent of Police, Panipat filed on behalf of respondent-State is taken on record. Registry is directed to tag the same at appropriate place.

5. Custody certificate dated 24.04.2023 is taken on record. As per custody certificate, the petitioner is involved in another FIR under Section 379-B of IPC and at present he is on bail.

6. Learned State counsel submits that police report has already been filed and charges stand framed. She further submits that out of 18 witnesses, 5 have already been examined which includes prosecutrix and

complainant. The petitioner is involved in the commission of grave offence, thus, no leniency is warranted and release of petitioner would hamper the trial.

7. In the case in hand, the petitioner is in custody since 26.07.2021. As per birth certificate, the prosecutrix at the time of commission of alleged offence was more than 18 years. The prosecutrix and complainant have turned hostile and they have not supported case of the prosecution. The Trial Court yet has to return definite findings on the disputed issues. There are 18 prosecution witnesses and till date only 5 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 tampering the evidences or winning over/threatening the witnesses.

8. 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.

9. 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

25.04.2023  
*Mohit Kumar*

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