

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

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CRM-M-57001-2022

Date of Decision: 12.04.2023

Sahil Bhagat

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. L.M. Gulati, Advocate for the petitioner

Mr. Amish Sharma, AAG, Punjab

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 regular bail in FIR No.252 dated 25.09.2022 under Sections 376 & 506 of Indian Penal Code, 1860 (for short 'IPC') registered at Police Station 'A' Division, District Amritsar.

2. The case of the prosecution is that complainant lodged a complaint alleging that she is studying B.Tech Computer Science Engineering from Guru Nanak University, Amritsar. Three years back, she became friend of Sahil Bhagat. They fell in love. For last one year, Sahil was harassing her. He was compelling her to make physical relations with him on the pretext of marriage. He used to call her in

‘Destiny Inn’ hotel and forcibly make physical relations with her. He prepared her video and started harassing her. He used to threaten her to make her video viral. She did everything as per wishes of Sahil. On 16.09.2022, she was going to her house from University and she received phone call from Sahil who asked her to meet her in ‘Destiny Inn’ Hotel. She refused, however, Sahil threatened her. She went to ‘Destiny Inn’ Hotel, where Sahil made physical relations with her against her wishes.

3. Learned counsel for the petitioner, *inter alia* contends that from the perusal of FIR as well as enclosed photographs, it is quite evident that there was affair of the petitioner with the prosecutrix. There was consensual relation between petitioner and prosecutrix. The prosecutrix in her cross-examination has denied all the allegations jotted down in the FIR. The petitioner is in custody for more than 6 months. He 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 Gurdaspur. The petitioner has deep roots in the society. There is no possibility of flee from justice.

4. Custody certificate dated 11.04.2023 is taken on record. As per custody certificate, the petitioner is in custody since 23.09.2022 and he is not involved in any other case.

5. Learned State Counsel submits that police report has already been filed and charges stand framed. He further submits that there are 15 witnesses and only one witness i.e. the 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. In the case in hand, concededly there was affair between petitioner and prosecutrix. The petitioner and prosecutrix were students of the same university. The prosecutrix in her cross-examination has substantially denied her allegations as noted in the FIR. The prosecutrix was major. The question of 'consent' as contemplated under Section 90 of IPC read with Section 375 IPC yet has to be adjudicated by the Trial Court. The petitioner is in custody since 23.09.2022 and he is not involved in any other crime. There are 15 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.

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

12.04.2023
Mohit Kumar

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