

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

212

CRM-M-58379-2022

Date of Decision: 05.05.2023

Mulayam Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Nitin Rampal, Advocate for the petitioner

Mr. Jaitishwar Singh, AAG, Punjab
(assisted by SI Barma Singh)

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.378 dated 02.09.2022 under Sections 376, 511 & 506 of Indian Penal Code, 1860 (for short 'IPC') registered at Police Station Sohana District S.A.S. Nagar, Mohali.

2. The case of the prosecution is that complainant lodged a complaint alleging that she is 21 years old and her father used to attempt to commit rape upon her. Whenever she opposes he will give beatings to her and her mother. On 30.05.2022, the accused tried to commit rape upon her and when her mother opposed, the accused gave beatings to her mother.

3. Learned counsel for the petitioner, *inter alia* contends that prosecutrix is daughter of the petitioner and she under the influence of her mother had lodged FIR against him. The petitioner, much prior to

registration of FIR, had made representation dated 05.08.2022 to Senior Superintendent of Police, Mohali wherein he had specifically made allegations against his wife. He has further pointed out that his wife is threatening to implicate him in a false case. The petitioner has transferred a sum of Rs.2.8 Lacs in the account of his wife for the marriage of prosecutrix, however, she had withdrawn the money and misused the same. The petitioner is a poor rickshaw puller. The petitioner is in custody since 04.09.2022 and he is not involved in any other crime. The petitioner has been wrongly implicated in the commission of alleged offence. The petitioner is permanent resident of District Mohali.

4. Custody certificate dated 08.04.2023 is taken on record. As per custody certificate, the petitioner is in custody since 04.09.2022 and he is not involved in any other offence.

5. Learned State counsel submits that police report has already been filed and charges stand framed. He further submits that out of 15 witnesses none has been examined. He fairly confirms veracity of representation dated 05.08.2022 filed by the petitioner.

6. In the case in hand, the petitioner is in custody since 04.09.2022 and he is not involved in any other offence. No recovery is to be effected from the petitioner. The representation dated 05.08.2022 filed by petitioner *prima facie* fingers towards existence of family disputes. The Trial Court yet has to return definite findings on the disputed issues.

There are 15 prosecution witnesses and till date none 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

05.05.2023
Mohit Kumar

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