

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

214

CRM-M-59274-2022

Date of Decision: 21.04.2023

Prince @ Prince Kumar

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Vishva Bahl, Advocate for the petitioner

Mr. Amish Sharma, AAG, Punjab
(assisted by ASI Parveen Kumar)

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.0023 dated 25.02.2021 under Sections 363 & 366-A of Indian Penal Code, 1860 (for short 'IPC') registered at Police Station Division-D, Amritsar.

2. The case of the prosecution is that complaint lodged a complaint alleging that her daughter aged 16 years is studying in IXth Class. Prince son of Rakesh Kumar, who used to roam outside her house, had evil eye on her daughter. On 25.02.2021, her husband informed her that Prince has eloped with their daughter. FIR came to be registered under Section 363, 366-A of IPC.

3. Learned counsel for the petitioner, *inter alia* contends that the petitioner is in custody since 17.03.2022. The prosecutrix stands

examined and she has turned hostile. The prosecutrix is still residing with family members of the petitioner. The prosecutrix in her statement before police as well as Magistrate has not supported case of the prosecution. The complainant is step-mother of the prosecutrix. The petitioner has been wrongly implicated in the commission of alleged offence. The petitioner is permanent resident of District Amritsar. There is no possibility of flee from justice.

4. Custody certificate dated 19.04.2023 is taken on record. As per custody certificate, the petitioner is in custody since 17.03.2022 and he is on bail in another case registered under Sections 21, 22 & 61 of NDPS Act.

5. Learned State counsel submits that police report has already been filed and charges stand framed. He further submits that out of 14 witnesses, 2 have already been examined which includes prosecutrix. 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 17.03.2022 and as per custody certificate though he is on bail in another FIR under NDPS Act but there is nothing on record disclosing that trial is pending against him. The prosecutrix, since registration of FIR, is not supporting case of the prosecution and she even, at present, is staying with family members of the petitioner. There is no allegation of physical contact against the petitioner. The Trial Court yet has to return definite

findings on the disputed issues. There are 14 prosecution witnesses and till date only 2 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;

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

21.04.2023

Mohit Kumar

Whether speaking/reasoned Yes/No

Whether reportable Yes/No