

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

208

CRM-M-59329-2022 (O&M)

Date of Decision: 01.05.2023

Rinku

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Gaurav Grover, Advocate with
Ms. Charu Sharma, Advocate for the petitioner
Ms. Dimple Jain, AAG, Haryana

JAGMOHAN BANSAL, J. (ORAL)

CRM-11576-2023

Application for placing on record Annexure P-4 is allowed.

The same is taken on record subject to just exceptions. Registry is directed to tag at appropriate place.

CRM stands disposed of.

CRM-M-59329-2022

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.559 dated 31.08.2021 under Sections 6 of Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act') [Section 376(2)(n), 376(A)(B) & 506 of Indian Penal Code, 1860 (for short 'IPC') added later on] registered at Police Station Samalkha, District Panipat.

2. The case of the prosecution is that complainant/mother of victim lodged a complaint alleging that her marriage was solemnized on 26.02.2007 with Sunil. She is having three daughters and one son. On 04.08.2020, her husband passed away. On 16.03.2021, she solemnized marriage with Rinku-petitioner. On 25.04.2020, Rinku came to her house and committed rape upon her 14 years' old daughter. Rinku was residing with them like a family member and now he has run away with one lady named Tannu.

3. Learned counsel for the petitioner, *inter alia* contends that petitioner never solemnized marriage with complainant i.e. mother of the prosecutrix and in her cross-examination, she had accepted this fact which belies her all allegations. As per complainant, alleged incident took place on 25.04.2020 and she solemnized marriage with petitioner on 16.03.2021. The petitioner has solemnized marriage with Tannu and complainant had lodged FIR because she had objection to the said marriage. The complainant had accepted that petitioner used to help them. She is staying in the parental house of Tannu i.e. wife of the petitioner, however, she has claimed that she does not know Tannu. In the FIR, she has alleged that petitioner was staying with her whereas in the cross, she had denied this fact and stated that he was staying with his family members, thus, there are material contradictions in the FIR and examination of the complainant. The petitioner is in custody since 09.09.2021. 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. Custody certificate dated 29.04.2023 is taken on record. As per custody certificate, the petitioner is in custody since 09.09.2021 and he has been acquitted in FIR No.75 dated 08.02.2020 registered at Police Station Samalkha, Panipat.

5. Learned State Counsel submits that police report has already been filed and charges stand framed. She further submits that out of 12 witnesses, 5 have already been examined which includes complainant as well 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 alleged offence was committed on 05.04.2020 and July 2020, however, complainant with her children continued to stay with the petitioner and as per FIR, she solemnized marriage with the petitioner on 16.03.2021 which fact she had denied in her cross-examination. As per custody certificate, no other case is pending against the petitioner. The petitioner is in custody since 09.09.2021. The prosecutrix and complainant stand examined, thus, there is no possibility of winning over or threatening of the material witnesses. No recovery has to be effected from the petitioner. The Trial Court yet has to return definite findings on the disputed issues. There are 12 prosecution witnesses and till date only 5 have been examined, thus,

there is abysmally low possibility of conclusion of trial in near future. The FIR was registered after quite long time from the date of alleged incident, despite that fact complainant and petitioner were staying in the same house. There is no medical evidence. 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

01.05.2023
Mohit Kumar

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