

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

228

CRM-M-61113-2022

Date of Decision: 25.05.2023

Bittu Singh @ Khush**...Petitioner****Versus****State of Punjab****...Respondent****CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL**

Present:- Mr. Ashok Kumar Sama, Advocate for the petitioner

Mr. Shiva Khurmi, AAG, Punjab
(assisted by SI Anwar Masih)

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.36 dated 31.03.2022 under Sections 363, 366 & 376 of Indian Penal Code, 1860 (for short 'IPC') and Section 4 of Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act') registered at Police Station Bilga, District Jalandhar Rural.

2. Examination of prosecutrix filed by learned counsel for the petitioner is taken on record. Registry is directed to tag the same at appropriate place.

3. The case of the prosecution is that mother of prosecutrix lodged a complaint alleging that she has two children. On 24.03.2022,

she along with her husband had gone to village Talwan to do labour work in a field. When they came back to home, prosecutrix (their daughter) said that she is going to temple. When she did return, complainant's husband inquired and came to know that some unknown person has enticed her.

4. Learned counsel for the petitioner, *inter alia* contends that prosecutrix and her parents stand examined and they have turned hostile. The petitioner is in custody since 26.05.2022 and 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 Fazilka. The petitioner has deep roots in the society. There is no possibility of flee from justice.

5. Custody certificate dated 24.05.2023 is taken on record. As per custody certificate, the petitioner is in custody since 26.05.2022 and he is not involved in any other offence.

6. Learned State counsel submits that police report has already been filed and charges stand framed. He further submits that out of 22 witnesses, 3 have already been examined which includes prosecutrix and her parents. He fairly concedes that all the witnesses have turned hostile.

7. The petitioner is in custody since 26.05.2022 and he is not involved in any other offence. The prosecutrix and her parents stand examined and they have turned hostile. Police report under Section 173 of Cr.P.C. stands filed and charges stand framed. The Trial Court yet has

to return definite findings on the disputed issues. There are 22 prosecution witnesses and till date only three have been examined, thus, there is abysmally low possibility of conclusion of trial in near future. The material witnesses i.e. prosecutrix and her parents stand examined, thus, there is no possibility of winning over or pressurizing them. 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. If the petitioner or his family members/associates make any attempt to threat/intimidate the witnesses in the present case, the State would be at liberty to move an application for cancellation of bail granted by this order.

10. 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

25.05.2023
Mohit Kumar

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