

CRM-M-60773-2022

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

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CRM-M-60773-2022

Date of Decision: 22.03.2023

Shokeen

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Saleem Ahmed, Advocate for the petitioner

Ms. Dimple Jain, AAG, Haryana
(assisted by SI Tek Chand)

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 regular bail in FIR No.196 dated 16.09.2022 under Sections 376, 376-D, 511 & 34 of Indian Penal Code, 1860 (for short 'IPC') and Sections 6, 8 & 17 of Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act') (Sections 376-D, 34 of IPC and Section 6 of POCSO Act deleted later on) registered at Police Station Bichhore, District Nuh.

2. The case of the prosecution is that on 16.09.2022, father of prosecutrix lodged a complaint alleging that on 15.09.2022 his daughter had gone to bring woods from their plot where accused-Shokeen was already present. He gagged mouth of his daughter and attempted to

commit rape. His daughter raised alarm and three persons gathered there who caught hold the accused. They called father of the petitioner who threatened to kill them.

On the basis of statement of complainant, FIR came to be registered under Sections 376, 376D, 511, 506 read with Section 34 IPC and Sections 6, 8 & 17 of POCSO Act. The FIR was registered against three persons, however, police during investigation found that two persons other than petitioner have been named on account of political rivalry. Challan came to be presented against the petitioner. Charges were framed under Section 376, 506 & 511 of IPC and Sections 8 and 17 of POCSO Act.

3. Learned counsel for the petitioner, *inter alia* contends that petitioner has been wrongly implicated in the alleged offence. The FIR was registered against three person, however, police had found that two persons were implicated on account of political rivalry which makes allegation of prosecutrix unbelievable. The petitioner is in custody since 16.09.2022 and he is not involved in any other offence. The petitioner is permanent resident of District Nuh. The petitioner has deep roots in the society. There is no possibility of flee from justice.

4. Custody certificate dated 22.03.2023 is taken on record. Registry is directed to tag the same at appropriate place.

5. Learned State counsel submits that police report has already been filed and charges stand framed. She further submits that out of 18 witnesses, one witness i.e. the prosecutrix stands 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, there was allegation against three persons and two persons, in the investigation, have been found innocent. There is allegation of attempt to commit rape. The petitioner is in custody since 16.09.2022 and he is not involved in any other offence. The Trial Court yet has to return definite findings on the disputed issues. There are 18 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/Illaqa/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

22.03.2023
Mohit Kumar

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