

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

220+1

CRM-M-60519-2022

Date of Decision: 13.02.2023

Joban Singh

...Petitioner

Versus

State of Punjab and Others

...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. G. S. Sandhu, Advocate for the petitioner

Mr. Digvijay Nagpal, AAG, Punjab

Mr. Arshvir Singh Sandhu, Advocate
for respondent Nos.2 and 3

JAGMOHAN BANSAL, J. (ORAL)

1. The petitioner, through instant petition under Section 439 Code of Criminal Procedure, 1973 is seeking regular bail in FIR No.159 dated 12.10.2022 under Sections 376 of Indian Penal Code, 1860 (for short 'IPC'), Section 6 of Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act') (later on Section 6 of POCSO Act stands deleted vide Rapat No.22 dated 05.11.2022) registered at Police Station Kabarwala, District Sri Muktsar Sahib.

2. The case of prosecution is that prosecutrix lodged complaint with police authorities alleging that on 10.10.2022 there was marriage anniversary of her parents. On that day, her sister and husband of her sister, namely, Joban Singh had come to join the ceremony. At 7:00 PM her brother-in-law Joban Singh told her that they will give surprise gift to

the parents and asked her to come on back side of the house. Her brother-in-law made her to sit on his motorcycle and took her away to market. Thereafter, he took her away to his house at Ratta Tibba where he committed rape upon her against her wishes.

3. Learned counsel for the petitioner, *inter alia* contends that prosecutrix is real sister-in-law of the petitioner and FIR was registered on account of misunderstanding between the parties. The prosecutrix in her statement before the Trial Court has turned hostile. She has not supported case of the prosecution. The mother of the prosecutrix has also not supported case of the prosecution. The petitioner is in custody since 12.10.2022. The petitioner is father of four minor children. The petitioner 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 Sri Mukstar Sahib. The petitioner has deep roots in the society. There is no possibility of flee from justice.

4. Mr. Arshvir Singh Sandhu, Advocate for respondent Nos.2 and 3 submits that he has no objection if petitioner is released on bail. It is a case of misunderstanding between the family members.

5. Custody Certificate dated 10.02.2023 is taken on record. Registry is directed to tag the same at appropriate place.

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 include the prosecutrix

and her mother. The petitioner is involved in the commission of grave offence. He concedes that prosecutrix and her mother have turned hostile.

7. In the case in hand, the petitioner is in custody since 14.10.2022 and he is not involved in any other criminal case. The prosecutrix and her mother stand examined and they have miserably failed to support case of the prosecution. They have been declared hostile. They are asking release of petitioner on bail. There are 22 prosecution witnesses and till date only 3 witnesses have been examined, thus, there is abysmally low possibility of conclusion of trial in near future. The petitioner is father of four minor children. 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 tempering the evidences or winning over/threatening the witnesses.

8. In view of afore-state facts and circumstances, this Court is of the considered opinion that present petition deserves to 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. 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

13.02.2023
Mohit Kumar

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