

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

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CRM-M-61047-2022

Date of Decision: 13.03.2023

Gagandeep Singh Alias Manu**...Petitioner****Versus****State of Punjab****...Respondent****CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL**

Present:- Dr. Anmol Rattan Sidhu, Senior Advocate with
Mr. Raghav Gulati, Advocate, and
Mr. Varun Sharma, Advocate for the petitioner

Mr. Amish Sharma, AAG, Punjab
(assisted by ASI Satnam Singh)

Ms. Jasneet Mehra, Advocate for the complainant

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.0023 dated 10.02.2021 under Section 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') (Section 6 of POCSO Act added later on) registered at Police Station Division-C, District Police Commissionerate Amritsar.

2. The case of the prosecution is that mother of the prosecutrix made a statement before police authorities that she is working as a beautician at her own house. She is a widow and having two daughters

and one son. In December 2018, she met Gagandeep Singh-accused who is running a medical shop. On 09.09.2019, the petitioner enticed away her daughter on the pretext of marriage and took her away to Midtown Hotel, near bus stand, Amritsar where he committed rape upon her daughter. The family of the petitioner as well as her family on 19.09.2019 went to Mcleodganj where both the families resided in a hotel in two rooms. The petitioner slept with the children and committed rape upon her daughter. On 01.11.2019, both the families went to Dalhousie where the petitioner committed rape upon her minor daughter.

3. Dr. Anmol Rattan Sidhu, learned Senior Advocate, *inter alia* contends that prosecutrix in her statement under Section 164 Cr.P.C as well as examination-in-chief and cross-examination had accepted that she had disclosed to her mother about incident of 09.09.2019 and she had not disclosed to her mother about the incident of 19.09.2019 as well 01.11.2019. FIR has been lodged on the statement of mother of the prosecutrix to whom the prosecutrix has not disclosed incidents of 19.09.2019 and 01.11.2019. The family of the petitioner and complainant were having cordial relations and they used to visit different hotels and sometimes used to stay there. On 09.09.2019, it was the complainant i.e. mother of the prosecutrix who had gone to the alleged hotel with the petitioner and not prosecutrix. The Manager of the hotel was examined in the Court in the presence of the complainant and he has confirmed that it was the complainant who had come to hotel with the petitioner on 09.09.2019 and not the prosecutrix. The alleged incidents, as per the

complainant, took place during September-November 2019 whereas FIR came to be registered on 10.02.2021. The complainant had lodged FIR just to blackmail the petitioner. The complainant is using her daughter knowing the fact that offence in case of a minor girl is grave and serious. The petitioner is not involved in any other offence and he is in custody since 10.02.2021. The prosecutrix and the complainant stand examined, thus, there is no possibility of winning over of the witnesses or tampering the evidence. The petitioner is a married man having a minor son. The petitioner has been wrongly implicated in the commission of alleged offence. The petitioner is permanent resident of District Amritsar. The petitioner has deep roots in the society. There is no possibility of flee from justice.

4. Status report by way of affidavit dated 12.03.2023 of Parvinder Kaur, P.P.S., Assistant Commissioner of Police, South Amritsar, Amritsar City, filed on behalf of respondent-State is taken on record. Registry is directed to tag the same at appropriate place.

5. Custody certificate dated 11.03.2023 is taken on record. Registry is directed to tag the same at appropriate place.

6. Learned counsel for the private respondent submits that prosecutrix is a minor and petitioner has committed grave and serious offence, thus, he does not deserve any leniency. Custody of 2 years in case of commission of an offence punishable under the POCSO Act is not sufficient.

7. Learned State Counsel submits that police report has already been filed and charges stand framed. He further submits that out of 20 witnesses, 4 have already been examined which includes the prosecutrix and the complainant. The petitioner is involved in the commission of grave offence, thus, no leniency is warranted and release of petitioner would hamper the trial.

8. A two judge Bench of Hon'ble Supreme Court in ***Satender Kumar Antil v. CBI; (2022) 10 SCC 51***, with respect to prevailing conditions of undertrial prisoner in India has observed:

“6. Jails in India are flooded with undertrial prisoners. The statistics placed before us would indicate that more than 2/3rd of the inmates of the prisons constitute undertrial prisoners. Of this category of prisoners, majority may not even be required to be arrested despite registration of a cognizable offence, being charged with offences punishable for seven years or less. They are not only poor and illiterate but also would include women. Thus, there is a culture of offence being inherited by many of them. As observed by this Court, it certainly exhibits the mindset, a vestige of colonial India, on the part of the investigating agency, notwithstanding the fact arrest is a draconian measure resulting in curtailment of liberty, and thus to be used sparingly. In a democracy, there can never be an impression that it is a police State as both are conceptually opposite to each other.”

9. Intent of arrest and reason of denial of bail is to:

- i) Secure the appearance of the accused at the time of trial;
- ii) allay possibility of repeating of offence & jeopardising own life on account of grim prospect of being convicted; and
- iii) Avoid possibility of tampering of evidence and security of witnesses who may be pressurised or maltreated.

10. In the case in hand, the alleged offence was committed during September- November, 2019 whereas FIR came to be registered in February' 2021. The cross-examination of prosecutrix and the complainant had already taken place. The petitioner is not involved in any other offence and he is permanent resident of Amritsar. The statement of Manager of the hotel is creating doubt in the case of prosecution. The prosecutrix in her statement under Section 164 Cr.P.C and examination-in-chief has stated that she disclosed to her mother about incident dated 09.09.2019 whereas complainant had made allegations of rape having been committed on 19.09.2019 and 01.11.2019. The prosecutrix had not denied factum of pen drive during the course of cross-examination which the petitioner is relying upon to support his case that it was the complainant who was having relation with the petitioner and not the prosecutrix. The petitioner is in custody since 10.02.2021. There are 20 prosecution witnesses and till date only 4

witnesses have been examined, thus, there is abysmally low possibility of conclusion of trial in near future. The material witness i.e. prosecutrix and complainant stand examined. 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.

11. In view of afore-stated 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/Illaqa/Duty Magistrate concerned.

12. 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

13.03.2023
Mohit Kumar

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