

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M-15503 of 2015
Date of Decision : 29.06.2015

Mahavir Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE R.P. NAGRATH

1. *Whether Reporters of the local papers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

Present: Mr. Devinder Kaushal, Advocate
for the petitioner.

Mr. Gazi Mohd., DAG, Punjab.

R.P. Nagrath, J.

Prayer is made by the petitioner for grant of anticipatory bail under Section 438 Cr.P.C. in FIR No. 04 dated 12.01.2011 for offences under Sections 377, 506 and 120-B of Indian Penal Code (IPC), registered at Police Station Sidhwan Bet.

The occurrence took place on 04.06.2010. The victim is a differently challenged person and was about 11 years old studying in the 2nd standard of the school. The victim went to the village school for playing alongwith Balraj Singh @ Raju, Sukhwinder Singh, Kala Singh-petitioner and Parveen Singh. There is also *Anganwadi* school within the premises of said school.

It was about 02.00 p.m. that Balraj Singh brought a stick and forced the victim to the toilet of the school and asked Sukhwinder Singh, Kala Singh and Parveen Singh to sexually assault the victim. These three accused persons committed carnal

intercourse against order of nature with the victim by turn. The victim cried and Balraj Singh gagged the mouth of the victim. The accused persons went away from the spot after doing the wrong act. The victim came home and narrated the whole incident to his mother. The victim started feeling acute pain and *sarpanch* of the village and maternal uncle of the victim took him to the civil hospital where he was medically examined.

I have heard learned counsel for the petitioner, the State counsel. The police record has been produced which is also perused. Learned counsel for the petitioner, vehemently, contended that there is huge delay in lodging the DDR and further that the petitioner has been named because of the party faction in the village.

In the DDR dated 10.06.2010, it was explained that delay in lodging the matter occurred because there was a talk of some compromise with the accused persons. FIR was recorded on the statement of mother of the victim on 12.01.2011. It was stated that her son now remains upset and mentally disturbed after the said occurrence. Mother of the victim made serious allegation of the police to be hand in glove with accused persons whereas complainant comes from a poor family.

Learned counsel for the petitioner submitted that as per contents of the FIR (Annexure P-2), enquiry into the version was made by the Deputy Superintendent of Police (DSP) and it was found that the boy is mentally challenged and does not remember anything about himself. It was further found that some bad elements taking advantage of the victim being mentally challenged

planned a conspiracy and got admitted the victim in the hospital and managed to get a false statement in which there is no truth. However, the report of the chemical examiner shows that the boy was sodomized but the allegations levelled by the boy against the petitioner and others are the outcome of party faction. Since the act of committing carnal intercourse against the order of nature was serious, the FIR was registered against unknown persons.

Learned counsel for the petitioner strongly referred to the enquiry report (Annexure P-3) made by the DSP on 29.06.2010. During the enquiry, statements of certain employees of *Anganwadi* school were recorded. According to the statements recorded, the key of the school remained with a lady official on 04.06.2010, who remained on duty from 08.00 a.m. to 12.30 p.m. That lady also stated that after locking door of the school keys of the school were taken to her house. She also stated that during this time, the victim and accused persons never visited the school.

The statement of the boy was recorded on 10.06.2010. The version is very serious. All these years i.e. for about 5 years no headway was made by the police to apprehend the culprits. The perineal swab of the boy was taken by the doctor and on examination of it spermatozoa were detected in the contents. A packet of sealed parcel was received in the office of Chemical Examiner on 09.06.2010 which consisted of one sealed parcel containing the perineal swab.

Learned petitioner's counsel, however, submitted that Balraj Singh, the named accused, has been found innocent during investigation and it was Balraj Singh against whom there was the

main allegation. I am, however, of the view that the act of committing unnatural act has been alleged against the petitioner and two others. Statement of the victim after recording of FIR was again recorded on 12.01.2011 who reiterated the facts mentioned in the DDR.

It would be seen that mother of the victim filed CRM-M-29098 of 2013 under Section 482 Cr.P.C. seeking fair and impartial investigation. During pendency of the said petition statements of Amar Singh, maternal uncle of the victim, Shankar Singh, before whom the complainant took the victim (her son), were recorded and they have supported the version against the accused persons. These statements were recorded in September, 2013 as per police record.

So, the present is a case of such a serious nature that there is no scope of admitting the petitioner to pre-arrest bail and rather it shows that he had been managing to avoid his arrest for about 5 years apparently with the help of police.

No merit in the instant petition and the same is dismissed.

June 29, 2015
jk

(R.P. NAGRATH)
JUDGE