

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

CRM-M-39621-2016 (O&M)

Date of Decision : 14.12.2016

Manoj Gautam

.....Petitioner

Versus

State of Haryana

.....respondent

Present : Mr. Jasdev Singh Mehndiratta, Advocate,
for the petitioner.

Mr. Sharad Kumar Yadav, DAG, Haryana,
for the respondent-State.

JAISHREE THAKUR, J.

1. The instant petition under Section 439 Cr.P.C. has been filed seeking grant of regular bail to the petitioner in case FIR No. 412 dated 02.11.2013 under Sections 376 of the Indian Penal Code (hereinafter referred to as “the IPC”) and 5 & 6 of Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as “the POCSO Act”), registered at Police Station Indri, District Karnal.

2. In brief, the facts of the case are that FIR No. 412 dated 02.11.2013 under Sections 376 IPC and 5 and 6 of the POCSO Act, was registered at Police Station Indri, District Karnal against the petitioner. In the said FIR, an allegation had been made that petitioner being Principal of a school had molested two young children aged four and five years. The matter was committed to the Court of Sessions for trial. After framing of the charges many prosecution witnesses were examined including, the two minor children. The prosecution has examined as many as 15 witnesses and the last witness was examined on 18.02.2015. Thereafter an application was preferred by the prosecution to examine two witnesses which application

was allowed. The petitioner filed an application for recording his statement under Section 313 Cr.PC. However, the said application was declined by the trial Court on the ground that only the witnesses in whose respect the application under Section 311 Cr.P.C. was allowed remained to be examined and, therefore, without conclusion of evidence statement under Section 313 Cr.P.C. cannot be invoked.

3. Mr. J.S. Mehndiratta, learned counsel appearing on behalf of the petitioner contends that a bare reading of the testimony of the prosecution witnesses and the medical evidence would show that no incident has taken place and the charges as levelled against him, are heinous in nature and absolutely false. In order to defend himself, he needs to be granted regular bail so that he is able to clear his name. It is further argued that any further incarceration of the petitioner would violate his right of life and liberty as envisaged under Article 21 of the Constitution even otherwise as an accused he is entitled to fair and speedy trial and in the instant case the trial is not progressing.

4. It is contended that the trial of the petitioner has not progressed after 09.03.2015. The petitioner was arrested by the police on 16.11.2013 and he has been in custody since then. It is argued that the prosecution has concluded its evidence and the main witnesses have been examined along with the doctor, therefore, no prejudice will be caused to the complainant. It is submitted that since evidence of the prosecution has been concluded the petitioner should be enlarged on regular bail in order to enable him to prepare and produce his defence.

5. Per contra, counsel appearing on behalf of the respondent-State opposed the grant of regular bail to the petitioner by arguing that the

petitioner herein is facing trial for a heinous crime committed upon minor children under Sections 376 IPC and 5 and 6 of the POCSO Act.

6. I have heard learned counsel for the parties and with their assistance have gone through the record of the case.

7. The principles governing the exercise of discretion by a Court while considering an application for grant of regular bail in a serious crime, have been dealt with in a catena of judgments rendered by the Hon'ble Supreme Court. In ***Ram Govind Upadhyay vs Sudarshan Singh & Ors, 2002(3) SCC 598***, it has been held that grant of bail involves the exercise of discretionary power of the Court and such exercise of discretion has to be made in a judicious manner and not as a matter of course. It was further held that the heinous nature of crime warrants more caution and there is a greater chance of rejection of a bail which, however, would be dependent on the facts of the matter. The Apex Court also referred to a decision rendered in ***Prahlad Singh Bhati v. NCT, Delhi & Anr. 2001 (4) SCC 280***, wherein in the case referred to it was stated as follows :

- “(a) *While granting bail the Court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.*
- (b) *Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the Court in the matter of grant of bail.*
- (c) *While it is not accepted to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the Court in support of the charge.*
- (d) *Frivolity in prosecution should always be considered*

and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.”

8. In a judgment rendered by the Apex Court in ***Masroor vs State Of U.P. & Anr*** reported as **2009(14) SCC 286**, it was held that the valuable right of liberty of an individual and the interest of the society has to be balanced. However, liberty of an accused of an offence would depend upon the exigencies of a case.

9. Applying the aforesaid principles, it has to be seen that in the instant case the petitioner herein is facing trial for offences allegedly committed upon two minor children and he is facing trial under Sections 376 IPC and 5 and 6 of the POCSO Act. The petitioner has been in custody since 16.11.2013 which is for a period more than three years. The prosecution has led its evidence and as many as 15 witnesses have been examined. The MLR has been conducted and the minor children too have been examined. The question whether the petitioner would be entitled to regular bail, has to be considered and taking certain factors into account. Primarily, what has to be seen is whether there is any likelihood of threat or intimidation? Whether offender is likely to repeat the act? Whether there is any chance of tampering with the material witnesses?

10. There is no doubt that the allegations raised are severe and if allegations are found true the petitioner would face imprisonment for at least 10 years if found guilty under Section 376 IPC and/or at least 05 years if found guilty under Section 10 of the POCSO Act.

11. The petitioner herein would likely not be in a position to

tamper with the evidence or influence the witnesses since the prosecution has examined the main witnesses and only two official witness's statement need to be recorded. It is also not possible for the petitioner to come in contact with the minor children since he is no longer holding the post of the principal.

12. The petitioner has been in custody for a period of more than three years and, as an accused is certainly entitled to prepare his defence as also to protect his reputation, thus, without expressing any opinion on the merits of the case, the petitioner is ordered to be released on regular bail on his furnishing bail bonds and one surety for a sum of ₹ 1,00,000/- to the satisfaction of the learned trial Court, Karnal, subject to the following conditions :-

- (i) He shall comply with the conditions mentioned in Section 437(3) Cr.P.C.
- (ii) In the event of his absence on any date of hearing, the benefit of bail allowed to the him shall stand withdrawn. The trial Court shall be competent to cancel his bail bond and surety bond and proceed to procure his presence in accordance with law. In that eventuality the petitioner shall have to apply for bail afresh before the trial Court.
- (iii) He shall not leave the country without the previous permission of the Court.

13. Further, it is made clear that the petitioner would not try to intimidate or influence the minor children of the witnesses, in any manner whatsoever, and in case it is found that he is doing so, the regular bail granted to him shall stand cancelled.

14.12.2016
SP

Whether speaking/reasoned

Whether reportable

(JAISHREE THAKUR)
JUDGE

Yes

No