

Criminal Misc. No. M-35107 of 2017 (O&M)

Date of decision : October 26, 2017

Gobinda Pandey

.....Petitioner

Versus

State of Punjab

....Respondent

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Vivek K. Thakur, Advocate for the petitioner.

Mr. Saurav Khurana, DAG, Punjab.

LISA GILL, J.

The petitioner prays for bail pending trial in FIR No. 5 dated 23.01.2016 under Sections 363A, 120B IPC (Section 376 IPC, Sections 4 and 8 of Protection of Children from Sexual Offences Act, 2012 added later) registered at Police Station Satnampura, Phagwara.

It is submitted that the alleged victim, in this case, and the petitioner had the friendly relations with each other. The alleged victim accompanied the petitioner on 07.01.2016. The FIR was lodged on 23.01.2016 by the complainant i.e. the father of the victim. The petitioner and the victim proceeded from Phagwara to Ludhiana, where a room was taken on rent. Both of them resided there for nearly one and a half month. The victim was thereafter recovered from the company of the petitioner on 26.02.2016. Learned counsel for the petitioner submits that the victim in her statement under Section 164 Cr.P.C. recorded on 26.02.2016 itself, clearly narrated the said facts.

She has mentioned herself to be about 18 years of age and the date of birth mentioned in her birth certificate is stated to be incorrect by her. The police on investigation in fact prepared a cancellation report as reflected in order dated 05.04.2016 passed in CRM-M-9227-2016 (Annexure P-2). The petitioner was released on bail under Section 167 (2) Cr.P.C. on 27.04.2016. However, the final report under Section 173 Cr.P.C. was presented by the police on the ground that the victim, in this case, was less than 18 years of age. The petitioner was again taken in custody on 05.09.2016. The victim, in this case, has since testified before the learned trial Court. She has, at this stage, supported the prosecution version under pressure of her family. The petitioner, it is submitted, is not involved in any other case. It is, thus, prayed that this petition be allowed.

I have heard learned counsel for the parties.

Learned counsel for the State while not opposing the factual position of the release of the petitioner under Section 167(2) Cr.P.C, statement of the victim under Section 164 Cr.P.C. as well as the preparation of the cancellation report initially, opposes this petition on the ground that the victim, in this case, is less than 18 years of age. Moreover, in her statement before the learned trial Court, she has raised specific allegations against the petitioner.

Learned counsel for the State, on instructions from HC Navdeep Singh submits that out of seventeen (17) prosecution

witnesses, only five (5) have been examined. The victim, in this case, is verified to have testified before the learned trial Court. The petitioner is not involved in any other criminal case.

There are no allegations on behalf of the State that petitioner is likely to abscond or that he is likely to dissuade the witnesses from deposing true facts in the Court, if released on bail.

No useful purpose shall be served by keeping the petitioner incarcerated any longer. Keeping in view the facts and circumstances noted above but without expressing any opinion on the merits of case, it is considered just and expedient to allow this petition.

Consequently, the petitioner be released on bail pending trial subject to his furnishing requisite bail bonds and surety to the satisfaction of the learned trial Court.

It is, however, clarified that the petitioner shall not try to contact the complainant or any of her family members in any manner - directly or indirectly. Any such infraction on the part of the petitioner shall entail cancellation of his bail.

It is reiterated that none of the observations made herein above are a reflection on the merits of the case and shall have no bearing on the trial.

October 26, 2017
rts

(Lisa Gill)
Judge

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No