

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

Criminal Misc. No.M- 39767 of 2016(O&M)

Date of Decision: July 14 , 2017.

Dalip Singh PETITIONER (s)

Versus

State of Haryana RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Akshay Bhan, Senior Advocate with
Mr. G.S.Sandhu, Advocate
for the petitioner.

Mr. Anmol Malik, AAG, Haryana.

Mr. Lal Singh Sandhu, Advocate
for the complainant.

1. Whether reporters of 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?

LISA GILL, J.

Prayer in this petition is for grant of anticipatory bail to the petitioner in FIR No.0167 dated 12.10.2016 under Sections 354A(1)/451 IPC and Section 12 of the Protection of Children from Sexual Offences Act, 2012 (for short, 'POCSO Act') registered at Police Station Nathu Sarai Chopta, Sirsa.

Allegations against the petitioner, who is a retired government employee aged about 60 years, are that he on finding the victim alone at her residence on 01.10.2016 at about 11.00 a.m. started teasing her. He touched her

cheeks and then held her hand. She however got her hand released and went crying to her neighbour's house. Finding none present in her neighbour's house, the victim went to a Maulvi of the Masjid, namely, Yakub Khan and revealed the incident to him. She then returned home and narrated the entire incident to her parents. Thereafter, the abovesaid FIR under Sections 354A(1), 451 IPC and Section 12 of the POCSO Act was registered.

This Court, on 21.11.2016 passed the following order:-

“Reply has been filed. The same is taken on record. A copy thereof has been supplied to the counsel for the petitioner.

Learned counsel for the petitioner contends that a reading of the FIR in question would not show that the conditions of Section 11 (i) of POCSO Act are satisfied in so far as there is no averment that the petitioner had touched the cheek or hand of the young daughter of the complainant with 'sexual intent' and none of the other conditions of Section 11 of the POCSO Act are applicable. The petitioner herein is ready to join investigation and as per the complaint as it is read out, no recovery is to be made.

Meanwhile, in the event of arrest, the petitioner be released on interim bail subject to his furnishing personal bonds and surety to the satisfaction of Arresting/Investigating Officer. However, the petitioner shall join the investigation as and when called upon to do so and shall abide by the conditions as provided under Section 438 (2) Cr.P.C.

In the meantime, the investigation be completed as expeditiously as possible. The matter to come up for reconsideration and subsequent confirmation after the investigation is completed.

An additional affidavit is to be filed by the State with regard to application of Section 11 of POCSO Act in this regard.

Put up on 18.01.2017.”

It is to be noted that on 06.01.2017, the offence punishable under Section 12 of the POCSO Act in the FIR was deleted and the offence punishable under Section 8 thereof was added. This Court on 20.03.2017 directed that an affidavit be filed as to how and on what basis Section 8 of the POCSO Act has been inserted in the FIR instead of Section 12 of the said Act.

Additional affidavit dated 12.07.2017 of Mr. Ravinder Kumar, HPS, Deputy Superintendent of Police, Ellenabad, District Sirsa on behalf of the respondent-State, filed in Court today, is taken on record subject to just exceptions.

It is mentioned in the said affidavit that legal advice was sought in this case from Assistant District Attorney, Sirsa on 06.01.2017 and it is on this advice that Section 8 of the POCSO Act was inserted instead of Section 12. Statement of the victim is stated to be recorded under Section 164 Cr.P.C. wherein she has reiterated the allegations.

On oral request of learned counsel for the petitioner Section 8 of the POCSO Act be inserted in the Head Note and the prayer clause of the petition. Necessary correction be effected by the Registry.

Learned counsel for the petitioner vehemently argues that the petitioner, who is a retired government employee, has been falsely implicated in this case due to money transactions with the victim's father and her uncle (Chacha). They had not returned the money therefore, the petitioner has been falsely involved in the present FIR. Furthermore, in this case no offence punishable under Section 12 much less Section 8 of the POCSO Act is made out against the petitioner.

Be that as it may, it is not denied by learned counsel for the State, on

instructions from ASI Subhash Chander, that the petitioner has joined investigation. His custodial interrogation, it is submitted, is not required. The petitioner, it is verified, is not involved in any other criminal case.

There are no allegations on behalf of the State that the 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.

Keeping in view the facts and circumstances as above but without commenting upon or expressing any opinion on the merits of the case, this petition is allowed. Consequently, order dated 21.11.2016 is made absolute.

It is clarified that none of the observations made hereinabove shall be construed to be a reflection on the merits of the case. The same are solely confined for the purpose of decision of the present petition.

July 14 , 2017.
'om'

(**LISA GILL**)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No