

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

CRM-M-18495 of 2018.

Decided on:- February 21, 2019.

Harpreet Singh.

.....Petitioner.

Versus

State of Haryana.

.....Respondent.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. J.S. Mehndiratta, Advocate
for the petitioner.

Mr. Manish Bansal, D.A.G., Haryana.

Mr. Dhruv Gautam, Advocate
for the complainant.

HARI PAL VERMA, J.

The petitioner has filed the present petition under Section 438 Cr.P.C. for grant of anticipatory bail in FIR No.33 dated 09.04.2018 under Section 10 of the Protection of Children from Sexual Offences Act, 2012 (for short, the POCSO Act) registered at Police Station Women, District Faridabad.

The FIR was registered at the behest of complainant Gaurav Dubey resident of H. No.6/22, Third Floor, East Patel Nagar, New Delhi and the petitioner is his co-brother-in-law. His in-laws are residing at H. No.839, Sector 15-A, Faridabad. Wife of the complainant had expired in September,

2017. The petitioner, his wife Harshita and their children are settled in in-laws house permanently. It was on 06.03.2018, when Harshita (sister-in-law of the complainant) had come to the house of the complainant and insisted him (complainant) that she wanted to take his daughter to his (complainant's) in-laws' house at Faridabad. The complainant allowed his daughter to accompany Harshita to their house at Faridabad. However, at night, when the victim/daughter of complainant was sleeping in the same room, she felt that somebody was touching her body through her clothes to commit sexual assault on her and also touched her private parts. She later came to know that it was her Mause, the petitioner herein. She opposed the advancement/dirty actions of the petitioner and withdrew at that time. Next morning, she sent a message to her father i.e. the complainant requesting him to send for a car as she (victim) wanted to come back to her home immediately. Though she did not tell anything what had happened with her on the last night. The complainant called her back so as to enquire what had happened to her, making her to come early, however, she told him that she would come and tell him the reason in person only. Since her result was likely to be announced on March 08, 2018, and that may be the reason for her anxiety to come early, the complainant still advised to stay there with her Mause for one more day and she may come on next date i.e. March 08, 2018 after picking up her report card from the school i.e. Convent of Jesus Mary. In this manner, on March 08, 2018, she returned to her house with her Mause after picking up report card from the school. When daughter of the complainant was talking to her friend about the incident, she got indication on her mobile phone that another

call was coming from her Mause, the present petitioner. Her friend asked her to take her Mause on conference so that she could record his conversation with the victim. She recorded that conversation on her mobile phone. During conversation, the petitioner enquired from the victim as to whether she had disclosed the incident to anybody to which the victim refused. He also enquired whether the victim was angry with him which also was refused by her. Thereafter, the petitioner allured her to accompany him for lunch/dinner. He also told her not to tell about the incident to anybody and more particularly to her father. In the meantime, the complainant noticed that the petitioner was loitering near his house and when the complainant tried to approach him, he ran away from the scene. The daughter of complainant instead of informing the incident to him informed the whole thing to his sister's daughter. In this manner, the complainant came to know about the incident.

Learned counsel for the petitioner has argued that the petitioner is a victim of deep rooted conspiracy against him and has falsely been implicated in the present case. The sister of petitioner's wife, namely, Rachna Dubey was married to the complainant, who unfortunately died on 08.09.2017 and after her demise, the petitioner's wife Harshita has been looking after the complainant's daughter as her own daughter and for this reason, the victim used to visit the petitioner and his wife very oftenly. The complainant had been treating his deceased wife with cruelty during her life time. Illegal demands of money were raised on a number of occasions. As the parents-in-law of the petitioner are old and infirm, the petitioner's wife met the illegal

demands by paying Rs.5 lakh on two different occasions to the complainant. The amount was paid only with a view to insulate her old and ailing parents from getting any shock on account of illegal demands raised by the complainant. Even after the death of complainant's wife Rachna Dubey, the complainant kept on raising demand of money. He (complainant) even threatened to involve the petitioner and other members of his family in false criminal case. He demanded Rs.25 lakh and also title deeds of the house which is in the name of Smt. Pushpa Singh mother-in-law of the petitioner. The petitioner's wife had recorded conversation between her and the complainant and when the complainant did not desist on mounting undue pressure, the petitioner's wife reported the matter to the police on 16.03.2018. In pursuance of his nefarious design, the aforesaid FIR has been registered against the petitioner by the complainant.

Precisely speaking, learned counsel for the petitioner has, *inter alia*, argued that (i) the present case has falsely been implicated upon the petitioner as there is a dispute regarding demand of property or money from the petitioner, (ii) the FIR has been registered after an inordinate delay and (iii) at the most, the present case is a case of mistaken identity as the wife of the petitioner was also sleeping on the adjoining bed and the petitioner was drunk on the relevant night.

On the other hand, learned State counsel and counsel for the complainant have argued that since the victim is a minor girl in close relations and there being specific allegations against the petitioner, he is not entitled for pre-arrest bail in this case.

I have heard learned counsel for the parties.

The argument of learned counsel for the petitioner that there was a property dispute between them for which the wife of the petitioner had submitted a complaint to the police on 16.03.2018 alleging extortion and intimidation to falsely implicate the petitioner in criminal proceedings, is of a subsequent date, for which a police complaint was allegedly submitted by the wife of petitioner on 16.03.2018, whereas as per the FIR, the present incident had occurred on 06.03.2018. The statement of the victim was recorded under Section 164 Cr.PC on 11.04.2018. The victim was a student of 10th class at the relevant time. She has got her statement recorded under Section 164 Cr.PC in English language, obviously she was a convent student studying in the school i.e. Convent of Jesus Marry. She has narrated that on 06.03.2018, when she was sleeping with her aunt, along with a double bed, a single bed was attached. The petitioner-accused was lying on the single bed adjacent to the victim, whereas the aunt and the victim were lying on the right side of the double bed and the accused was on the left side. They all were sleeping, but suddenly, the petitioner-accused started touching the victim inappropriately. He even opened her undergarment from her back side inappropriately to which the victim thought he mistakenly believed her as his wife. The victim categorically told the accused that it was she (victim) and not his wife, but despite telling him, he continued touching the victim inappropriately to which the victim tried to shift, but there was less space and for this reason, she could not shift much. The petitioner pulled the victim towards him and put his

finger in her mouth. The victim woke up her aunt and went on her side to sleep.

Considering the statement under Section 164 Cr.P.C. made by the victim, wherein she has stated that despite the petitioner having been cautioned by the victim, he continued to sexually assault her, this Court finds that the argument of learned counsel for the petitioner that he has falsely been implicated as there was a dispute regarding property or money and it is a case of mistaken identity, cannot be accepted. In case petitioner is admitted on anticipatory bail there is possibility that he may influence the witnesses including the victim. Thus, this Court finds that no ground is made out for grant of anticipatory bail to the petitioner.

Accordingly, the present petition, being devoid of any merit, is dismissed.

The observations made hereinabove shall not be construed as an expression of opinion on the merits of the case and the trial Court shall decide the case without being influenced with these observations in any manner.

February 21, 2019
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No