

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

CRM-M-40629 of 2019.

Decided on:- December 17, 2019.

Lakhwinder Singh @ Pappu.

.....Petitioner.

Versus

State of Punjab.

.....Respondent.

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

Present:- Mr. S.S. Sarwara, Advocate
for the petitioner.

Mr. Sukhbeer Singh, A.A.G., Punjab.

HARI PAL VERMA, J. (Oral)

Pursuant to the previous order dated December 10, 2019, Varun Sharma, Superintendent of Police, City, Patiala is present in Court and has submitted that on the relevant date, the concerned investigating officer was on leave. In these circumstances, ASI Bhupinder Singh was deputed to assist the learned law officer. He has shown his regret for the inconvenience caused to the Court.

Accordingly, personal appearance of the Superintendent of Police, Patiala is dispensed with.

The petitioner has filed present petition under Section 439 Cr.P.C. for grant of regular bail in FIR No.44 dated 25.04.2019 under Sections 354-A and 354-B IPC and Section 12 of the Protection of Children from Sexual Offences Act, 2012 (for short, the POCSO Act) (Sections 363,

376 and 506 IPC as well as Section 4 of the POCSO Act added later on) registered at Police Station Jhulka, District Patiala.

The aforesaid FIR was registered at the behest of Jaswinder Kaur, who is mother of the prosecutrix. As per the FIR, the complainant was away to her parents' house since 02.02.2019 and she returned to her matrimonial home on 18.04.2019. The prosecutrix (minor daughter) told the complainant that in the absence of the complainant, the petitioner had come to their house when her father, grandfather and grandmother were out for work. The petitioner teased her and did wrong thing with her. He took her to a room and forced her to take off her clothes.

Learned counsel for the petitioner has argued that the FIR is completely silent as regard the date and time of incident. Even otherwise, there is already an *inter se* dispute between the parties and the matter was brought to the notice of the Gram Panchayat as well. It is in this background, the aforesaid FIR has been registered.

He has further contended that as per the FIR, the incident came into notice of the complainant on 18.04.2019, but still the FIR was registered on 25.04.2019. There is no medical report to support the case of the prosecution that any wrong act was committed with the prosecutrix. Despite the FIR having been registered on 25.04.2019, the victim was medically examined on 28.04.2019 without there being any plausible explanation. The petitioner is in custody since 11.07.2019 and the conclusion of trial is likely to take long time as only 1 witness i.e. the prosecutrix has been examined in the case so far as against total 19 witnesses cited by the prosecution.

Learned State counsel, on instructions from Inspector/SHO Gurpreet Singh does not dispute the custody, however, states that in the case in hand, the victim is about 6 years of age. Moreover, her statement under Section 164 Cr.PC was recorded wherein she has stated that the petitioner had picked up the victim in his lap and took her in his house and nobody was present in his house. He had put his hand in her underwear and took off all her clothes. He further submits that in this manner, the petitioner committed the offence is sexual assault invoking Section 4 of the POCSO Act. The prosecutrix has also been examined in the case and she has supported the prosecution case.

I have heard learned counsel for the parties.

A bare perusal of the contents of the FIR as well as statement under Section 164 Cr.PC of the prosecutrix does reflect that there is no specific date and time as regard the incident. Though the prosecutrix has been examined as PW1, but she has made improvement in her statement, wherein she has stated that the petitioner had put his penis in her private part, whereas in her statement under Section 164 Cr.PC, no such allegation was made by her. Even otherwise, there is no medical report to support the case of the prosecution that the petitioner has committed sexual assault as alleged in the FIR.

The petitioner is in custody since 11.07.2019 and the conclusion of trial is likely to take sufficient long time as only 1 witnesses has been examined in the case against the total 19 witnesses cited by the prosecution. Therefore, when the culpability of the petitioner is yet to be established

during the trial, this Court finds that the petitioner deserves to be admitted on bail.

Accordingly, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing adequate bail and surety bonds to the satisfaction of learned trial Court.

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.

December 17, 2019
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No