

CRM-M-11281-2020 (O&M)

Date of decision : 30.10.2020

Harsh Dhiman

.....Petitioner

Vs.

State of Haryana

.....Respondent

CORAM: HON'BLE MRS. JUSTICE ALKA SARIN

Present: Mr. Manoj Kumar Pundir, Advocate, for the petitioner.
Ms. Dimple Jain, AAG, Haryana.

ALKA SARIN, J. (ORAL)

Heard through video conferencing.

The present petition under Section 438 of the Code of Criminal Procedure, 1973 (CrPC) has been filed for grant of anticipatory bail to the petitioner in FIR No.27 dated 25.02.2020 under Section 506 of the Indian Penal Code, 1860 and Section 12 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) (later on Section 8 of the POCSO Act has been added in place of Section 12 of the POCSO Act) registered at Police Station Women, Yamuna Nagar, District Yamuna Nagar.

On 21.09.2020, the following order was passed:-

“Heard through video conferencing.

The present petition under Section 438 of the Code of Criminal Procedure, 1973 (Cr.P.C) has been filed for grant of anticipatory bail to the petitioner in FIR No.27 dated 25.02.2020 under Section 506 of the Indian Penal Code, 1860 and Section 12 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) (later on Section 8 of the POCSO Act has been added in place of Section 12 of the POCSO Act) registered at Police Station Women, Yamuna Nagar, District Yamuna Nagar.

Learned counsel for the petitioner has contended that the petitioner, who is an 18 year old Class-XII student, has been falsely implicated in the case. It is further contended that the complainant, her daughter and the petitioner are residents of the same locality and the present FIR is the result of a minor altercation between the complainant and the family of the petitioner. Learned counsel for the petitioner has further contended that the allegations in the FIR are that the petitioner had been teasing the 13 year old daughter of the complainant for the last four months and due to which her daughter had not gone to school for the last two months nor was she going for tuitions. Learned counsel for the petitioner would contend that not only is there a delay of four months in lodging of the FIR but the allegation that the daughter of the complainant had not gone to school or for tuitions for the last two months, and no one questioned her, seems rather improbable. It is further contended that a bare reading of the FIR makes it patent that no offence under Sections 8 and 12 of the POCSO Act is made out. It is argued that the pre-condition for the substantive offence enumerated in Section 11 of the POCSO Act is that sexual harassment of a child is committed with a sexual intent. The learned counsel would contend that the pre-condition for attracting Sections 11 and 12 of the POCSO Act are woefully missing in the present case. Ms. Dimple Jain, Assistant Advocate General, Haryana has put in appearance on behalf of the State and has stated that the minor daughter of the complainant has supported the case in her statement recorded under Section 164 Cr.P.C.

List on 30.10.2020.

Meanwhile, the petitioner shall join investigation and would come present as and when called for. In the event of arrest, the petitioner shall be admitted to interim bail on furnishing adequate surety and personal bonds to the satisfaction of the Arresting Officer. The petitioner shall abide by all the terms and

conditions as specified in Section 438(2) of the Code of Criminal Procedure, 1973.”

Learned counsel for the State, on instructions from ASI-Poonam, has stated that the petitioner has since joined investigation and he is no longer required for further investigation as of now.

In view of the above, the order dated 21.09.2020 is made absolute. The petitioner shall, however, join investigation as and when called. The petitioner shall also abide by all the terms and conditions as specified under Section 438(2) of the Code of Criminal Procedure, 1973. Further, the petitioner shall give an undertaking before the Investigating Officer stating therein that he would not approach and harass the minor in any manner. It is made clear that in case the petitioner is found indulging in any sought of harassment or tries to approach the minor child, the instant order shall be liable to be re-called.

Disposed off accordingly.

October 30, 2020

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NOTE:

(ALKA SARIN)
JUDGE

Whether speaking/non-speaking: Yes/No

Whether reportable: Yes/No