

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

**CRM-M-22199 of 2020 (O & M)
DATE OF DECISION : 07.10.2020**

Fazal Hussain

...Petitioner

Versus

State of Haryana

...Respondent

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. J. S. Bedi, Senior Advocate with
Mr. Sunil Sihag, Advocate,
for the petitioner.

Mr. Bhupender Singh, DAG, Haryana.

Dr. Anmol Rattan Sidhu, Senior Advocate with
Mr. Suvir Sidhu, Advocate,
for the complainant.

(Presence marked through video conference).

CRM NO. 22469 OF 2020

For the reasons stated in the application, same is allowed and medical report of the petitioner contained at Annexure P-5 is taken on record, subject to all just exceptions.

MAIN CASE

Petitioner seeks grant of regular bail in FIR No. 19 dated 17.04.2020 registered under Sections 323/363/366/506 IPC and Section 6 of Protection of Child from Sexual Offences Act, 2012 (hereinafter referred to as "POCSO Act"), at Police Station Women, Nuh (though challan has now been presented under Section 10 of POSCO Act, 2012 and Section 506 IPC only. Sections 328/363/366 IPC and Section 6 of POSCO Act have been deleted).

2. Matter was heard at some length on 25.09.2020 and the following order was passed :

“Having heard the learned Senior counsel for the petitioner, as well as learned State counsel and also the prosecution version from Inspector Seema, SHO, Police Station Women, Nuh, who has also joined the proceedings through Video Conferencing, this Court deems fit that, in view of the peculiar allegations, which are not being reproduced, at this stage, for the sake of privacy of both the prosecutrix and the accused, let a statement of prosecutrix be got recorded before the concerned Illaqa Magistrate under section 164 of the Criminal Procedure Code. Allegations of the prosecutrix are contained in her complaint dated 13.07.2020, forwarded by the Child Welfare Committee to SHO, Police Station, Nuh, wherein the hand written statement/ complaint of the prosecutrix was also appended. But intriguingly, no further action on the complaint has been taken till date. More of that later, if warranted. Ordinarily, the Lady Investigating Officer, who conducted the earlier investigation and filed the challan, would have been expected to take the prosecutrix for recording her statement, but it transpires that said Officer is currently not available. In the premise, Inspector Seema, SHO, Women Police Station, Nuh, shall do the needful. She shall ensure that, at the time of her contacting the prosecutrix and/or while taking her for recording of her statement under Section 164 Cr.P.C., she personally accompanies her without letting anybody from either side, including any of the family members of the prosecutrix contact her, since the allegations of wrong doing with prosecutrix are against her own family members. Copy of this order be conveyed to Superintendent of Police, Nuh for requisite compliance, as aforesaid.”

3. Pursuant to the aforesaid order, statement of prosecutrix under Section 164 Cr.P.C., has now been recorded before a Magistrate. It seems that the tables have turned, as is borne out from what has been stated by the prosecutrix before the Magistrate.

4. Learned State counsel, under instructions of Ms. Seema, Inspector/SHO, Women Police Station, Nuh, submits that the prosecutrix was taken unaccompanied by any of the representatives of either side before the Magistrate. She has stated that the allegations made by her against the accused/petitioner were under the influence of her family members. They had put gun on her chest, looped a noose around her neck with a rope and tied the other end of the rope and, threatened to eliminate her if she did not make the allegations against petitioner on the dotted lines, as desired by them.

5. While on the other hand, learned senior counsel for the complainant (father of the prosecutrix) submits that the aforesaid statement by the prosecutrix seems to have been made under the influence of the accused/petitioner.

6. The accused/petitioner has been admittedly in custody since 14.05.2020. Accordingly, there could not have been any contact between the accused and the prosecutrix. The said assertion of learned senior counsel, therefore, seems to be a mere presumption, since concededly the prosecutrix was taken to the Magistrate unaccompanied. It is unlikely that would have been under the influence of the accused, given the gap of five months, during which the accused could not have met or spoken to the prosecutrix, being in custody.

7. Be that as it may, the merits of aforesaid assertions and counter assertions are to be ascertained in the course of trial. At this stage, in view of the statement of the prosecutrix recorded under Section 164 Cr.P.C, it does not seem to be a fit case where petitioner shall be kept in further preventive custody.

8. On a query of the Court, learned State counsel does not controvert that investigation in the case is complete. Challan in the case was filed on

06.06.2020. Trial of the case is unlikely to commence anytime soon due to the pandemic caused by Covid-19, as the Courts are currently working under restrictions and taking up only urgent matters and the evidence is not being recorded.

9. Having heard learned counsel for the parties, I am of the opinion that no useful purpose would be served by keeping the petitioner behind the bars since investigation in the case is already over and challan has been presented. The trial is not likely to commence any time soon due to current pandemic conditions.

10. In the premise, the instant petition is allowed. The petitioner is ordered to be released on bail on his furnishing bail bonds and surety bonds to the satisfaction of trial Court/Illaqa Magistrate/ Duty Magistrate.

OCTOBER 07, 2020
shalini

(ARUN MONGA)
JUDGE

Whether speaking/reasoned : **Yes/No**

Whether reportable : **Yes/No**