

In virtual Court

CRM-M-23151-2020

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-23151-2020 (O&M)

Date of decision: 02.09.2020

Mohinder Kumar

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. P.S. Ahluwalia, Advocate
for the petitioner.

Mr. Joginder Pal Ratra, DAG, Punjab.

Mr. Gagandeep Singh Manku, Advocate
for the complainant.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this petition is for grant of anticipatory bail in FIR No.310 dated 23.10.2019 under Sections 376, 506 IPC and Sections 6 & 12 of POCSO Act, registered at Police Station City Kapurthala, District Kapurthala.

Learned counsel for the petitioner submits that the petitioner is employed as a Teacher and is presently Head of Department (Mathmatics) in Dhilwan International Public School, Dhilwan, Kapurthala. It is further submitted that as per allegations in the FIR, the victim stated that alleged incident of sexual assault is of May, 2019, whereas the FIR was registered in October, 2019. It is also submitted that father of the prosecutrix and the petitioner are the cousin brothers and there is a dispute regarding payment of

money and father of the prosecutrix has even issued a cheque dated 21.10.2019 for Rs.2.00 lacs favouring the petitioner, however, the same was dishonoured by the bank and in a complaint filed by the petitioner, father of the prosecutrix stands summoned by the trial Court.

Learned counsel for the petitioner further submits that during the investigation, the police recorded statement of real uncle (chacha) and real aunties (tai and chachi) of the victim regarding the incident. Learned counsel has relied upon statement of three witnesses (Annexures P-8 to P-10), wherein all these witnesses, who are closely related to the victim and her father, have stated that there is a dispute between the petitioner and father of the prosecutrix.

Learned counsel has referred to report of the DSP, Sub Division Kapurthala dated 23.05.2020, wherein based on an inquiry, it was found that the petitioner and the victim never interacted on their mobile phone, though the allegations in the FIR are that the petitioner used to visit house of the victim frequently. Based upon statement of the aforesaid three persons, it was observed that challan be presented against the petitioner without arresting him and the same be left with the discretion of the Court. It is further submitted that age of the prosecutrix is 17 and half years and in a calculated manner, present FIR has been registered to avoid the liability of payment.

Learned State counsel has not disputed the fact regarding inquiry conducted by the DSP.

Learned counsel for the complainant has opposed the prayer for bail on the ground that the police is not arresting the petitioner and he has also filed CRWP-6398-2020, which is also listed with the present petition, in which

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a prayer is made that the petitioner be arrested. Learned counsel has referred to MLR of the victim, wherein it is reported that it is a case of sexual assault in May, 2019, however, on local examination, no injury or bleeding on perineal parts, hymen was absent.

In reply, learned counsel for the petitioner has referred to later part of this MLR, wherein, the details regarding penetration (as narrated by the victim), it is mentioned there was no penetration, therefore, it is a case of false implication.

After hearing learned counsel for the parties and considering the facts and circumstances of the case, this petition is allowed and the petitioner is granted the concession of anticipatory bail subject to the conditions envisaged under Section 438 (2) Cr.P.C.

The petitioner will appear before the Investigating Officer or 14.09.2020 at 10.00 a.m. or any other date or time as fixed by the Investigating Officer to join the investigation.

It is made clear that the petitioner will not visit house of the complainant or the place, where the prosecutrix is either studying or working, in any manner and in case he violates this condition, it will be open for the complainant/prosecution to move an application for cancellation of bail.

**[ARVIND SINGH SANGWAN]
JUDGE**

02.09.2020
vishnu

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No