

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Sr. No.209

CRM-M-23549-2020

Date of decision : 29.10.2020

Sandeep

..... Petitioner

VERSUS

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Rakesh Nehra, Advocate, for the petitioner.

Mr. Munish Sharma, AAG, Haryana.

SUDHIR MITTAL, J. (Oral)

This petition has been filed for grant of regular bail to the petitioner in case FIR No.79 dated 11.12.2019, registered at Police Station WPS, Rewari, under Section 6 of the POCSO Act, 2012.

The FIR was registered on written complaint dated 11.12.2019 made by the mother of the minor girl, who has been sexually assaulted. According to the complaint, the parents of the minor girl aged about 11 ½ years got divorced and the custody of the child was handed over to the father i.e. elder brother of the petitioner. Since then, she has been residing at his house. He got re-married on 21.11.2019 and on the same day the minor girl was touched inappropriately by the petitioner, her Uncle (Chacha). The act was repeated after a couple of days and this time, the minor child complained to her Aunt (Chachi), who told her to ignore the same as her Uncle (Chacha) was drunk. In the night on 11.12.2019, the minor girl was sleeping with her Aunt (Chachi) and sometime during the night, she was picked up and taken to his bed by the Uncle (Chacha) and raped. The incident was disclosed to her Aunt (Chachi) who told her to inform the complainant. Thus, the written complaint was submitted and FIR was

Learned counsel for the petitioner has argued that the petitioner has been in custody since the date of registration of the FIR. A period of more than 11 months has elapsed, but the trial has not even commenced. Although, charges have been framed, examination of PWs has not started and a total of 23 PWs have been mentioned in the challan. There is no other criminal case pending against the petitioner and thus, he may be granted regular bail on the ground of custody period and that trial is not likely to be concluded at an early date.

On merits, it is submitted that minor child has been tutored by the complainant (mother) as she wants her custody. The incident is falsified by the fact that major discrepancies exist in the written complaint, statement of the minor child recorded under Section 161 Cr.P.C. and her statement recorded under Section 164 Cr.P.C. The medical examination does not reveal sexual assault. It is, thus, evident that a false case has been foisted upon the petitioner, who is a married man with two young children.

Learned State counsel opposes the prayer for bail. He submits that there is no material discrepancy in the statements of the minor child. A very heinous offence has been committed and it is unfortunate that the defence is trying to attribute motives to the mother to shield a sick person.

As noted hereinabove, according to the written complaint dated 11.12.2019, the minor girl was first touched inappropriately on 21.11.2019 and then a couple of days, thereafter. On 11.12.2019, a wrong act was allegedly committed by the petitioner by pulling down the lower part of her night dress and by use of his private part. In the statement recorded under

version has been repeated, except that in addition, it has been stated that she escaped from there. In the statement recorded under Section 164 Cr.P.C., a copy of which is on record as Annexure P-4, she has not mentioned the acts of molestations committed on 21.11.2019 and a couple of days later, but has only related the event of 11.12.2019. Variation from her earlier statement is that she try to make a noise, but the petitioner closed her mouth and also she tried to awaken her Aunt (Chachi), but could not succeed. During her medical examination on 11.12.2019, an additional fact regarding the petitioner having inserted his finger into her uterus has also been mentioned. No injuries have been recorded in the said medical examination.

Thus, in my opinion, the minor child has remained stead fast in her testimony so far as the incident of molestation and aggravated sexual assault are concerned. Although, in her statement recorded under Section 161 Cr.P.C. (Annexure P-2), she has stated that she escaped when the petitioner pulled down her lower, the said fact cannot lead to a conclusion that the minor girl is being tutored and that she has concocted a story. In material particulars, she has remained stead fast and there is no change in the dates and timing of the various incidents. Minor discrepancies in her statements cannot lead to the conclusion that she is not a truthful witness. Although, the MLR (Annexure P-3) does not reveal any injury, it does not mean that aggravated sexual assault did not occur. When a child is under the power and control of a relative, many sexual acts can be done, which amount to aggravated sexual assault, but may not result in any bodily injury. While evaluating the situation, perception and understanding of the child regarding the act also has to be kept in mind.

The petitioner has been accused of a heinous crime. The delay in conclusion of the trial complained of by him, is not so inordinate so as to entitle him to grant of bail. Thus, his prayer for bail on the ground of period of custody and that the trial is being delayed, cannot be accepted.

In view of the aforementioned reasons, this petition has no merit and is dismissed.

It is, however, made clear that nothing stated hereinabove shall be construed to be an expression of opinion on the merits of the case.

(SUDHIR MITTAL)
JUDGE

29.10.2020
Ramandeep Singh

Whether speaking / reasoned

Yes / No

Whether Reportable

Yes/ No