

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

CRM-M No.34528 of 2019

Date of decision: 16.03.2020

Diwanshu @ Diwanshu Kumar

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. J.P. Sharma, Advocate
for the petitioner.

Mr. Naveen Sheoran, DAG, Haryana.

ARVIND SINGH SANGWAN J. (Oral)

Prayer in this petition is for grant of regular bail to the petitioner in FIR No.121 dated 02.05.2019 registered under Sections 363, 34 IPC and 4 of the Protection of Children from Sexual Offences Act, 2012 at Police Station Ateli, District Mahendergarh.

Counsel for the petitioner has argued that as per the allegations in the FIR, the complainant has alleged that his son aged about 11 years, who was studying in 6th standard, was enticed away by the petitioner along with 02 other accused namely Vasudev and Rahul near the forest in the village and they committed bad act with his son. It is further submitted that, in fact, on account of a complaint filed under Sections 499, 500, 501, 120-B IPC, by Sushila Devi, mother of the petitioner against the complainant party and Bachna Devi, Sarpanch in which they were summoned by the trial Court and the petitioner has been involved in the case as a counter-blast to the same.

Counsel for the petitioner has placed on record the certified copy of the statement of the complainant, who has appeared as Witness

No.01 wherein he has not stated anything about the bad act committed by three accused persons and this witness was declared hostile by the Public Prosecutor and he was, thereafter, cross-examined and in his cross-examination, he has even denied making a complaint against the petitioner as stated in the FIR.

Counsel for the petitioner has then, referred to the statement of victim, who appeared as Witness No.2. The trial Court after satisfying that he is a competent witness, recorded the statement in which he has only stated that a quarrel has taken place between a motorcyclist and his father and the accused did not commit any bad act with him. This witness was also declared hostile and when confronted with his own statement Ex.PW2/A, he has even denied making such statement to the police. Counsel for the lastly referred to the statement of Witness No.3, who is brother of the complainant and uncle of the victim and he has also not supported the prosecution version and he was even declared hostile by the Public Prosecutor.

Counsel for the petitioner has further argued that the petitioner is a 19 years' old boy, who is a student and he is in custody for the last 10 months and further submitted that since all the private witnesses have already been examined, there is no possibility for the petitioner to tamper with the prosecution evidence, at this stage.

Counsel for the State, on instructions from ASI Babu Lal, and on the basis of the affidavit of the Investigating Officer, has however, opposed the prayer for bail on the ground that on receiving a complaint from the complainant, the FIR was registered and the matter was investigated by the Deputy Superintendent of Police, Kanina and thereafter, challan was presented before the trial Court.

Without commenting anything on merits of the case, considering the fact that the petitioner is in custody for the last 10 months; all the private witnesses of the prosecution have already been examined and the conclusion of the trial will take long time, this petition is allowed and the petitioner is directed to be released on bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate.

While submitting the surety bonds, the parents of the petitioner will also furnish an affidavit that the petitioner in no way, will try to contact the victim or his family members in future and in case, if any complaint is made with regard to misusing the concession of bail then, it will be open for the prosecution to apply for cancellation of bail of the petitioner.

(ARVIND SINGH SANGWAN)
JUDGE

16.03.2020
yakub

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No