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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.17879 of 2021 (O&M)

Date of Decision: 28.06.2021

SANDEEP KUMARPetitioner
Vs
STATE OF HARYANARespondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Sanjeev Sheoran, Advocate for
Mr. Vishva Nath Sharma, Advocate for the petitioner.

Mr. Bhupender Singh, D.A.G., Haryana.

RAJ MOHAN SINGH, J.(Oral)

The case has been taken up for hearing through video conferencing.

Petitioner seeks grant of regular bail in his second attempt under Section 439 Cr.P.C in case bearing FIR No.85 dated 27.05.2020, registered under Section 376 AB IPC and Section 6 of the POCSO Act at Police Station Partap Nagar, District Yamuna Nagar. Earlier CRM-M No.38044 of 2020 was dismissed as withdrawn vide order dated 22.01.2021.

Learned counsel for the petitioner submitted that the offence alleged against the petitioner is under Section 376-B IPC and Section 6 of the POCSO Act. Section 6 of the POCSO Act is the punishment for aggravated penetrative sexual assault.

Penetrative sexual assault is defined under Section 3 of the Act.

As per allegations in the FIR, the complainant i.e. mother of the victim has alleged penetrative sexual assault, but in the medico legal examination of the victim no injury was found nor any symptoms of assault were detected on the person of the victim. As per opinion of the Doctor, no fresh external injury on any part of the body of the victim was found. The statement of the victim under Section 164 Cr.P.C. remained inconclusive as she could not state about the incident despite counselling. The statement of the victim as PW-3 only suggested that the accused spitted on her private part. Whether such an act would fall under Sections 3 and 6 of the Act would remain debatable as the allegations in respect of commission of rape are prima facie negated in the medical legal examination.

Learned counsel for the petitioner referred to cross-examination of the complainant where she was confronted in respect of her statement as Ex.D-1. The material brought on record by the prosecution would be subject to judicial scrutiny of the Court at an appropriate stage. No opinion can be formed at this stage.

Learned counsel further submitted that the petitioner is in custody since 28.05.2020. Out of total 18 prosecution witnesses only 06 witnesses have been examined so far. Owing to the

prevailing situation arising out of COVID-19 pandemic, the trial of the case may take sometime in its culmination. The punishment under Section 7 of the POCSO Act shall not be less than 3 years which may extent to 5 years and shall also be liable to fine.

On the other hand, learned State counsel submitted that the material collected by the prosecution would be tested by the trial Court at an appropriate stage. It is true that in the FIR, the complainant has alleged penetrative sexual assault, but in the medico legal examination, no injury was found on the person of the victim.

At this stage without making any observation on merits of the case, I deem it appropriate to enlarge the petitioner on regular bail.

In view of above, petition is allowed. Petitioner is ordered to be released on bail, subject to his furnishing adequate bail bonds/surety bonds to the satisfaction of the trial Court/concerned Duty Magistrate.

Nothing expressed hereinabove would be construed to be an expression of any opinion on merits of the case.

(RAJ MOHAN SINGH)
JUDGE

June 28, 2021

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Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No