

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

**CRM-M-19956-2020
Date of Decision : 24.03.2021**

Budhu Ram @ Akshay

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Rishabh Gupta, Advocate
for the petitioner.

Mr. Joginder Pal Ratra, DAG, Punjab.

ARVIND SINGH SANGWAN, J. (Oral)

This is a petition filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR No. 156 dated 18.11.2019 under Sections 354-A, 342 of the IPC (Section 354 of the IPC added later on) and Section 10 and 12 of Protection of Children from Sexual Offences Act, 2012 registered at Police Station Mahilpur, District Hoshiarpur, Punjab.

Learned counsel for the petitioner submits that as per allegations in the FIR, registered at the instance of complainant Harpreet Kaur, the mother of the victim (name withheld), it is stated that her daughter, aged about 06 years, had gone to a *Kiryana* shop and came back about 10-15 minutes and was scared. When complainant asked her, she told that petitioner namely Akshay, whose real name is Budhu Ram, took her inside the house from the street and gave her mouth to mouth kisses and thereafter, took her to bathroom, where he tried to

open his pants and asked her to hold his private part in her hands and when she started crying loudly and came out of the house, she was seen by Sandesh Kumari and Bhinda, who brought her to her house.

Learned counsel for the petitioner further submits that petitioner is in judicial custody from 18.11.2019 i.e. from the last about 01 year 04 months and 05 days and now the statement of the prosecutrix, who is now aged about 08 years, has been recorded by the trial Court.

Learned counsel for the petitioner has placed on record a photocopy of the statement of the prosecutrix to submit that in examination-in-chief, she has stated that petitioner caught hold of the victim and put his mouth into her mouth and she started crying and he took her to the bathroom where he opened his pants and told her to hold his private organ in her hand and when she started crying, she came out and on reaching her house, she informed her mother about the incident and she identified the accused in the Court.

Learned counsel for the petitioner further argues that the main defence of the petitioner is his false implication and the same is reflected in the cross-examination of the victim, wherein, the following statement has been recorded:-

“....Thereafter, the above said three persons, brought me to my house and handed over me in the custody of my mother. The alleged occurrence in the street happened for about two minutes. My statement was recorded by the Judge and I was accompanied by the police officials and my mother. Outside the court, I was tutored by the police as well as by my mother how and in what manner the statement is to be given, resultantly the statement was given. My mother was outside the court. Even, today outside the court, I was tutored by my mother outside the court that how and in what manner I have to depose. Resultantly, I deposed today in the court.”

Learned counsel for the petitioner further submits that on account of some previous enmity, the complainant has falsely implicated the petitioner by using the minor child.

Learned counsel for the petitioner further argues that false implication of the petitioner can also be inferred from the fact that when the victim was taken to the Government hospital for her medical examination, it was reported that there is no fresh injury mark on the patient's body and there is no history of any sexual assault and the complainant made a statement that she does not want to get the internal examination of her child to be conducted by the doctor.

Learned counsel for the petitioner further submits that it will be a matter of trial whether such incident has actually taken place or not.

Learned counsel for the petitioner further submits that statement of the victim has been recorded and now there is no possibility of extending any threat to the victim.

In compliance of earlier direction given by this Court, the Additional Sessions Judge, Hoshiarpur has submitted a report dated 25.02.2021 to the effect that the prosecutrix stands examined as PW-1.

Learned State counsel does not dispute the fact that the victim was never medically examined as well as the fact that she has been examined as PW-1 as noticed above.

I have heard learned counsel for the parties.

Without commenting on the merits of the case and considering the aforesaid submissions made by learned counsel for the parties and also in view of the fact that petitioner is in judicial custody for the last about 01 year 04 months and 05 days, the instant petition is allowed. The petitioner is ordered to

be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate/Illaqa Magistrate, concerned.

24.03.2021
Waseem/Chetan

(ARVIND SINGH SANGWAN)
JUDGE

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