

212

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

CRM-M-24813-2021

Date of Decision: 07.07.2021

Gurdeep Singh @ Kalu

Petitioner

Versus

State of Punjab

Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Ajay Kamboj, Advocate for the petitioner.

Ms. Monika Jalota, Deputy Advocate General, Punjab.

AVNEESH JHINGAN, J (Oral):

[1] The matter is taken up for hearing through video conference due to COVID-19 situation.

[2] This is a second petition seeking regular bail in F.I.R. No. 0192, dated 11th August, 2020, under Section 354-A of the Indian Penal Code, 1860 [hereinafter 'IPC'] and Section 8 of the Protection of Children from the Sexual Offences Act, 2012 [hereinafter 'POCSO Act'] (Section 376DA of IPC and Section 4 of POCSO Act were added later on), registered at Police Station City-1, Abohar, District Fazilka.

[3] F.I.R. was registered on the statement of victim (name withheld) aged 13 years. As per the FIR, on 10th August, 2020, victim went to purchase biscuits from the departmental shop of Sunil Kumar. When she went to shop, Sunil Kumar closed the gate and bolted the door from inside. He, with the bad intention, started touching upper

parts of body of the victim. The victim raised alarm as a result Sunil Kumar ran away. The parents of victim were doing labour work. Initially due to fear, she did not disclose the incident but later on she narrated everything to her mother. She was taken to Civil Hospital and thereafter F.I.R. was registered. On the basis of supplementary statement of victim, D.D.R. No. 44, dated 14th August, 2020 was registered, wherein the petitioner was named. She stated that Sunil Kumar called her inside the shop for giving biscuits, he went out of the shop on the excuse to answer nature's call and locked the gate from outside. There was an unidentified person hiding in the shop who forcibly made physical relation with her.

[4] Learned counsel for the petitioner submits that petitioner was not named in the FIR. He is in custody since 5th November, 2020. There is one day delay in registering the F.I.R., thereafter D.D.R. was registered after three days. He submits that as per M.L.R., hymen of the victim was not ruptured and human semen was not detected on vaginal swab.

[5] Learned State counsel submits that victim was of tender age, she was 13 years old at the time of incident. In the statement made by the victim under Section 164 of Cr.P.C., she stated that unknown person was hiding in the shop but later she identified the petitioner. It is further submitted that as per Section 8 of the POCSO Act, penetration is not essential ingredient. The contention is that prosecutrix is still yet to be examined.

[6] The victim is 13 years old, she belongs to strata of society where parents are doing labour work to make two ends meet. There are allegations of forcible physical relation made by petitioner, the provisions of POCSO Act are involved and non-existence of human semen in the vaginal swab is not sufficient to bail out the petitioner. One day delay in registering the F.I.R. in such cases will not prove fatal. The supplementary statement made after three days by victim cannot be ignored, there is every possibility of victim being perplexed by the incident. The prosecutrix is yet to be examined and she has identified the petitioner, no case is made out for bail. Earlier petition seeking regular bail by the petitioner was withdrawn from this Court on 27th April, 2021.

[7] The petition is dismissed.

[8] However, it is clarified that nothing stated hereinabove shall be construed as an expression of opinion on the merits of the case.

[AVNEESH JHINGAN]
JUDGE

7th July, 2021

pankaj baweja

1. Whether speaking/ reasoned	:	Yes
2. Whether reportable	:	Yes