

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(208)

CRM-M-34030-2021
Date of decision: 18.11.2021

Pankaj

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Rajender Singh Malik, Advocate for the petitioner.

Ms. Deepshikha Chauhan, AAG, Haryana

...

SUVIR SEHGAL, J. (ORAL)

Heard through video conferencing.

Counsel for the petitioner submits that both the victim and her mother have been examined as prosecution witnesses no.1 and 2. He has filed their testimony, which is taken on record as Mark 'A' and Mark 'B', respectively.

Instant petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 seeking grant of regular bail in case FIR No.12 dated 05.01.2021, registered under Sections 354 and 323 of the Indian Penal Code, 1860 and Sections 8 and 10 of the Protection of Children from Sexual Offences Act, 2012 (for short "the POCSO Act") and under Sections 75 and 79 of Juvenile Justice Act, 2015 at Police Station Model Town Panipat, District Panipat, Annexure P-1.

As per the version of the prosecution, FIR (Annexure P-1) has been registered on the basis of a complaint received from the Child Welfare

Committee, Panipat, wherein it has been stated that the minor victim had been working in the house of Pooja for the last 1½ years and was taking care of her infant and doing odd jobs. Whenever Pooja went to her parental house at Jalandhar, she took her child as well as the victim along. When she went to Jalandhar in October, 2020, Pankaj, brother of Pooja, molested the victim. When the victim disclosed this fact to Pooja, she threatened her and told her not to disclose the incident to anyone otherwise she will involve her in a criminal case. The victim worked with Pooja till 01.12.2020. Subsequently, on 02.12.2020, Pooja came to her house and physically assaulted her, which fact has been recorded in a video.

Counsel for the petitioner has urged that a false case has been foisted against the petitioner as not only there is a delay of 03 months in the lodging of the FIR, but also the victim and her mother, who have stepped into the witnesses box, have not supported the allegations levelled in the FIR. He has made a detailed reference to the testimony Mark 'A' and Mark 'B' of both the witnesses. Still further, it is his contention that the victim has mentioned her age as 19 years when she appeared in the Court on 11.11.2021, whereas it has been alleged in the FIR that she was 16-17 years of age at the time of the incident, which is factually incorrect. He submits that the offences as alleged including the invocation of the POCSO Act, are not made out, and the petitioner, who has an unblemished past and is in custody since 26.05.2021, deserves to be released on bail as besides the above two witnesses, the prosecution has given up practically all other witnesses.

Per contra, learned State counsel, upon instructions from, SI, Vijender Singh has opposed the petition on the ground that the allegations levelled against the petitioner are grave and serious and he is not entitled to the concession of bail. She, however, could not dispute the fact that both the complainant and her mother have turned hostile.

I have considered the respective submissions of counsel for the parties.

In view of the facts and circumstances noticed above, it would remain debatable as to whether the petitioner is involved in the offence. Considering the fact that the petitioner is in custody for the last more than 05 months, victim and her mother have been examined and the trial is likely take time to conclude, this Court is of the view that he deserves to be enlarged on bail.

Without delving into the merits or de-merits of the arguments addressed by the counsel for the parties, the petition is allowed. The petitioner, namely, Pankaj, is ordered to be released on bail on his furnishing adequate bail/surety bonds to the satisfaction of the Illaqa Magistrate/Duty Magistrate concerned.

It is clarified that any observation made hereinabove shall not be construed to be a reflection of opinion on the merits of the case.

18.11.2021

Kamal

(SUVIR SEHGAL)

JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No