

205

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M No.30116 of 2020 (O&M)

Date of decision: 22.03.2021

Sunny

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Rajesh Bansal, Advocate
for the petitioner.

Mr. Deepak Grewal, DAG, Haryana.

ARVIND SINGH SANGWAN J. (Oral)

Prayer in this petition is for grant of regular bail to the petitioner under Section 439 of the Code of Criminal Procedure (in short 'Cr.P.C.') in FIR No.365 dated 22.05.2019, for offence punishable under Sections 506 of the Indian Penal Code, 1860 (in short 'IPC') and 6 of the Protection of Children from Sexual Offences Act, 2012 (in short 'the POCSO Act' registered at Police Station Model Town, District Panipat (trial Court framed charges under Sections 376, 506 IPC and 4 of the POCSO Act).

Counsel for the petitioner has submitted that as per the allegations in the FIR, registered at the instance of the prosecutrix on 22.05.2019, she has gone to a stitching centre where the petitioner met her and took her away by inducement and committed rape on her on the pretext of marriage and later on, he refused to marry her.

Counsel for the petitioner has further submitted that the petitioner is in custody since 31.05.2019, the prosecutrix and her

mother has been examined and they have not supported the prosecution version.

It is worth noticing that on 24.02.2021, noticing the fact that 13 PWs have already been examined, however, the prosecutrix and her mother are not examined, an explanation was called from the District Attorney, Panipat and further direction was issued to the Superintendent of Police, Panipat, to ensure that the statement of the victim as well as her mother be recorded.

The District Attorney, Panipat, has submitted an affidavit stating that necessary instructions have been issued to all the concerned persons/Special Public Prosecutors that the victim(s) of the POCSO Act, 2012 shall be examined at the first instance of her/their presence before the trial Court and a request will be made to the Special Courts that in all the POCSO Act cases, the examination of the victims should be made as per the time frame under Section 35(1) of the POCSO Act, 2012 i.e. 01 month of taking cognizance by the learned Special Courts under the POCSO Act, 2012.

However, it is stated that now the statement of the victim and her mother has been recorded on 05.03.2021 and both of them have resiled from their earlier statements given to the police and they were declared hostile and even in the cross-examination by the Public Prosecutor, they have not supported the prosecution version.

Counsel for the State on the basis of the Custody Certificate has not disputed the factual position but opposed the prayer for bail. It is further submitted that the trial is likely to be concluded soon.

After hearing the counsel for the parties, without commenting anything on merits of the case, considering the undertaking given by the District Attorney, Panipat that in future all the efforts will be made to comply with the provisions of Section 35(1) of the POCSO Act, 2012, to record the statement of the victim(s) within 01 month of taking the cognizance by the Special Courts, the show cause notice issued to the District Attorney is dropped accordingly and further considering the fact that the petitioner is in custody for the last 01 year and 10 months; the prosecutrix and her mother have not supported the prosecution version and became hostile; the custodial interrogation of the petitioner is not required and the conclusion of the trial will take some time due to COVID-19 situation, 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.

However, it will be open for the prosecution to apply for cancellation of bail of the petitioner, in case he is found involved in any other case or misusing the concession of bail, in any manner.

A copy of this order be sent to the Director Prosecution, Haryana for circulating amongst all the District Attorney(s) in the State of Haryana, to comply with the mandate under Section 35(1) of the POCSO Act.

(ARVIND SINGH SANGWAN)
JUDGE

22.03.2021

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Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No