

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

202

CRM-M-34763-2021  
Date of Decision: 13.10.2021

Gurpreet Singh and another

..... Petitioners

Versus

State of Haryana

..... Respondent

**CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH**

Present : Mr. Shobit Phutela, Advocate,  
for the petitioners.

Mr. Munish Sharma, AAG, Haryana.

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**AMOL RATTAN SINGH, J. (ORAL)**

On 25.08.2021 the following order had been passed by this  
court:-

“Case heard via video conference.

By this petition, the petitioners seek the concession of 'anticipatory bail' under the provisions of Section 438 Cr.P.C., upon FIR No.110, dated 01.06.2021, having been registered at Police Station Ismailabad, District Kurukshetra, alleging therein the commission of offences punishable under the provisions of Sections 377/511/506//34 of the IPC (with Sections 6, 6/18 of the Protection of Children from Sexual Offences Act, 2006,, added later).

Learned counsel for the petitioners submits that the petitioners were admitted to bail as regards the offences punishable under the provisions of Sections 377/511/506 of the IPC, by the learned Sub-Judicial Magistrate, Pehowa, vide his order dated 22.06.2021; but only after the offences punishable under the provisions of the POCSO Act were added, their petition under the provisions of Section 438 of the Cr.P.C. was rejected by the learned Additional Sessions Judge, Kurukshetra.

He further submits that the complainant is actually above 18 years of age and has wrongly himself shown to be below the age of 18 years.

Notice of motion.

On the asking of the court, Mr. Neeraj Poswal, A.A.G., Haryana, accepts notice on behalf of the respondent-State.

A copy of the petition be supplied to learned State counsel by counsel for the petitioners today itself.

Learned State counsel submits that it was not the first such offence committed by the petitioners, with 'wrongful relations' having been made with the victim earlier also, even as per the FIR; and further, with the offences punishable under the provisions of POSCO Act carrying a minimum sentence of 20 years rigorous imprisonment, the petitioners do not deserve to be admitted to bail.

Learned counsel for the petitioners of course counters by stating that the alleged victim was almost 18 years of age even as per documentary evidence, and with no complaint made by him with regard to any previous history of any unnatural relations, except in the FIR itself.

Having considered the matter seeing that even as per the instructions of learned State counsel, the alleged complainant was 17 years 9 months and 20 days old on the date of the alleged occurrence, and the petitioners already had been admitted to bail before the offences under the POCSO Act, 2006 were added, the petitioners are directed to join investigation within one week and if, upon them so joining, they are sought to be arrested, they shall be released on interim bail, upon their furnishing adequate bail and surety bonds to the satisfaction of the arresting officer/Duty Magistrate, till the next date of hearing.

They shall also comply with all conditions stipulated in Section 438(2) of the Cr.P.C.

If the arresting officer does not join the petitioners in investigation, they would appear before the learned Ilaqa Magistrate immediately, who would then summon the arresting officer and direct him to join the petitioners in investigation, in terms of the order of this Court.

A gazetted officer will file a status report with regard to the investigation carried out so far.

Adjourned to 13.10.2021.”

A reply to the petition has been filed by the DSP, Pehowa, dated 01.10.2021, which is ordered to be taken on record.

The reply essentially reiterates the contents of the FIR after which the investigation conducted has been referred to, including obtaining the documents as regards the age of the victim, who was found to be a minor (with his date of birth being 11.08.2003).

Though the DSP, in his affidavit has stated that the offence alleged to have been committed being a heinous offence, and has referred to the order passed by the learned Additional Sessions Judge, Kurukshetra, rejecting a similar petition filed before that court, on 17.08.2021, to submit that there being a penetrative sexual assault etc., the petitioners did not deserve to be admitted to bail; however, learned State counsel submits, on instructions from SI Puran Dass, that the petitioners have joined investigation pursuant to the order dated 25.08.2021 and presently their custodial interrogation is not required.

Though otherwise I would agree with the order passed by the learned Additional Sessions Judge, Kurukshetra, however, as noticed in the previous order passed by this court, initially the petitioners had been admitted to interim bail on 22.06.2021, but with that petition having been dismissed only on account of an offence punishable under the POCSO Act having been added subsequently, but with the alleged victim also having stated in the FIR that wrongful relations were made with him on earlier occasions, and he is stated to have been 17 years and 10 months old on the

date of the commission of the alleged offence, without making any comment on the actual merits of the case, the petition is allowed with the order passed by this court, dated 25.08.2021, made absolute; with the learned trial to proceed wholly on the basis of evidence led before it.

(AMOL RATTAN SINGH)  
JUDGE

13.10.2021  
adhikari

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|---------------------------|--------|
| Whether speaking/reasoned | Yes/No |
| Whether Reportable        | Yes/No |