

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No. 213

CRM-M-37761-2020
Date of decision : 08.01.2021

Rahul

..... Petitioner

VERSUS

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Ms.Riffi Birla, Advocate, for the petitioner.
 Mr.Amit Mehta, Sr.DAG, Punjab.
 Ms.Pushpinder Kaur, Advocate, for the complainant.

DEEPAK SIBAL, J. (ORAL)

Case taken up through video conferencing.

The present petition has been filed under Section 439 Cr.P.C. for the grant of regular bail in FIR No.37 dated 31.03.2020, registered under Sections 376/506 IPC and Section 4 of the Protection of Children from Sexual Offences Act, 2012 (for short, the POCSO Act) (Sections 376-D, 363, 366-A IPC and Section 6 of the POCSO Act added later on) at Police Station City-II Abohar, district Fazilka.

Briefly stated, the case of the prosecution is that the prosecutrix was raped by co-accused Monu in the petitioner's presence.

Seeking regular bail for the petitioner learned counsel submits that the petitioner, who is a young boy aged 22 years, has been falsely implicated in the present case; there is no medical evidence to support the case of the prosecution; the complainant has filed an affidavit before this Court through which he has retracted from his complaint; the petitioner is not involved in any other criminal case; he is in custody since 31.03.2020; report under Section 173 Cr.P.C. has already been filed and therefore he is not in a position to influence the investigation; even if the contents of the FIR are taken as a gospel truth, though vehemently denied, there is no allegation of rape qua the petitioner as such allegation is only against co-accused Monu and that the petitioner's trial which is yet to commence will take a long time to conclude.

Learned State counsel opposes the grant of bail to the petitioner on the ground that the petitioner is alleged to have been present at the time when the co-accused committed rape of the prosecutrix, who is a minor girl.

Learned counsel for the complainant admits to the contents of the aforesaid affidavit filed on behalf of her client in which the complainant has retracted from the complaint filed by him to the police which formed the basis of the FIR in question.

The effect of the complainant's retracting from the complaint filed by him would be debated during the course of the trial. However, the petitioner is a young boy aged 22 years; he has been in custody since 31.03.2020; he is not involved in any other criminal case; the allegation of rape is not against him but against co-accused Monu; report under Section 173 Cr.P.C. has already been filed and therefore he is not in a position to influence the investigation and that his trial which is yet to commence is likely to take a long time to conclude especially in the present circumstances when the world is facing the COVID-19 pandemic.

In view of the above, the present case is considered to be a fit one in which the petitioner be directed to be released on regular bail. Resultantly, subject to the satisfaction of the CJM/Duty Magistrate, Fazilka the petitioner is directed to be released on bail.

It is clarified that the above observations have been made only for the limited purpose of deciding the present regular bail application and the same would not be construed to be an expression of opinion on the merits of the case.

08.01.2021
shamsher

[DEEPAK SIBAL]
JUDGE

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