

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

212

CRM-M-1178 of 2022 (O & M)

Date of decision :-04.05.2022

Bhuvuk Setia @ Prince Sethia

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Raj Kumar Rana, Advocate for the petitioner.

Ms. Deepshikha Chauhan, DAG, Haryana
for the respondent-State.

SUVIR SEHGAL, J.

Instant petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 (for short “Cr.P.C.”) for releasing the petitioner on regular bail during the pendency of the trial in case FIR No.149 dated 23.03.2021 lodged for offences under Sections 6, 17 of the Protection of Children from Sexual Offences Act, 2011 (for short “the POCSO Act”), Section 365, 506, 34 IPC and under Sections 67 and 67-A of Information Technology Act, 2008 at Police Station Krishna Gate, Thanesar, Kurukshetra.

Case of the prosecution is that an FIR has been registered on the statement of a mother of a 16 year old school going girl (for short – “the minor prosecutrix”) on the allegation that she had gone to her friend’s house for taking notes and when she did not return after a long time, a search was conducted, inquiries were made from her friend, who told the complainant that her daughter had left much earlier. At about 4-5 pm, the minor prosecutrix came back home and told her mother that she is not well and feeling dizzy and she look scared. On questioning, she confided that when

she was returning back from her friend's house, a boy named Rahul, who resides nearby accompanied with Prince Sethia, present petitioner, met her and took her to a saloon at Birla Mandir Chowk at Kurukshetra under threat to eliminate her. Prince Setia sat outside and Rahul raped her and later left her near her home on a scooty.

Counsel for the petitioner has argued that the minor prosecutrix was in a relationship with Rahul and wanted to marry him. He has placed reliance upon the whatsapp chat, Annexure P-2, as well as the photographs, Annexure P-3, to fortify his submission. Counsel contends that the petitioner, who has been in custody since 23.03.2021, has been falsely framed and there is no allegation of sexual assault against him.

Per contra, learned State counsel upon instructions from SI Veer Singh, has opposed the petition by making a reference to the statement of the minor prosecutrix recorded under Section 164 of the Code as well as her testimony, which has been appended with the petition as Annexure P-4, wherein she has supported the allegations.

I have heard counsel for the parties and considered their submissions.

Petitioner has been categorically named in the FIR as well as in the statement recorded by the prosecutrix before the Magistrate as well as in her testimony before the Court. In particular, a reference deserves to be made to the deposition of the minor prosecutrix where she has stated that the petitioner and Rahul made her sniff something, forced her to sit on a bike and when she came to her senses, she saw that she was naked. She requested them to release her but Prince Setia caught hold of her hands and Rahul committed "wrong act" with her. They had switched off her mobile.

Rahul violated her and she started bleeding. Thereafter Prince Setia told Rahul that he wants to do the same. They clicked her photographs and threatened her not to disclose the incident to anyone otherwise they will make the photographs viral. Then they made her sit on a bike and threw her near a school. Her trousers were drenched with blood due to excessive bleeding.

Petitioner is probably an accomplice in a heinous crime of sexual assault of a minor and has played an active role. The reliance placed by the counsel upon the whatsapp chat as well as the photographs will be of no help to the petitioner as the minor prosecutrix has specifically denied any whatsapp messaging with the accused and insofar as two of the photographs are concerned, in which she is seen standing with Rahul, she has stated that they have been taken at the birthday party of her friend.

Keeping in view the nature of allegations, gravity of offence, severity of punishment likely to be imposed in case the petitioner is convicted, this Court is of the view that the petitioner is not entitled to be granted the concession of bail during the pendency of the trial.

Petition is dismissed.

As an abundant caution, it is made clear that observations made hereinabove shall not be construed to be a reflection of the opinion on the merits of the case.

04.05.2022
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(SUVIR SEHGAL)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No