

**217 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-5283-2022

Date of Decision: 5.7.2022

Amit alias Pista

..... Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Hitesh Chopra, Advocate, for the petitioner.

Ms. Sakshi Bakshi, Assistant Advocate General, Punjab.

Rajesh Bhardwaj, J. (ORAL)

Prayer in the present petition is for the grant of regular bail to the petitioner in a case FIR No.117 dated 13.10.2019, registered under Section 376-A, 376-B, 511, 506 and Section 6 of POCSO Act, at Police Station Sujanpur, District Pathankot.

As per factual matrix of the case, the FIR in question was lodged by the grand mother of the victim. It was alleged that her grand daughter i.e. the victim was 7 years of age and used to study in 3rd standard. The complainant found that after coming from school, her grand daughter used to remain disturbed for the last 3-4 days and used to cry. On her asking, the victim told her that on 10.10.2019 at about 8:15 am, Amit alias Pista i.e. the petitioner took her to vacant plot and he took off her inner garments. When she started crying, he escaped from the spot and she was threatened by the accused that in case she disclosed anything, she would be killed. The FIR was lodged to take legal action against the accused. After lodging the FIR, the investigation commenced and the petitioner was arrested on 14.10.2019. The petitioner approached the learned Additional

Sessions Judge, Pathankot for grant of bail, who after hearing the parties, declined the same vide its order dated 25.1.2022. Aggrieved by the same, the petitioner approached this Court by way of filing the present petition for grant of regular bail.

Learned counsel for the petitioner vehemently contends that the petitioner has been falsely implicated in the present FIR. He has submitted that the present FIR has been lodged by the grand mother of the victim on the basis of the false and frivolous allegations. He submits that except the bald allegations, there is no evidence produced by the prosecution against the petitioner. He submits that during the investigation, the victim was to be medically examined, however, no consent was given regarding the same. Thus, the victim was not medically examined. He further submits that after the conclusion of the investigation, the trial Court proceeded with the examination of the prosecution witnesses. The victim was examined as PW-4, whereas, the complainant i.e. the grand mother of the victim was examined as PW-5. He submits that both these material witnesses when appeared before the trial Court did not support the case of the prosecution and thus, they were declared hostile. He submits that since both the material witnesses have not supported the case of the prosecution, the petitioner is entitled to be released on bail. He submits that the petitioner has no criminal antecedents and he is behind bars since 14.10.2019 and hence, deserves to be granted bail.

Learned State counsel has opposed the submissions made by learned counsel for the petitioner and submitted that the victim in this case is a child of 7 years of age. However, she fairly acknowledges that no

consent for the medical examination of the victim was given and hence, the same could not be conducted. Besides this, both the prosecution witnesses i.e. the victim and the complainant did not support the case of the prosecution. She submits that in all there are 20 prosecution witnesses, out of which 4 witnesses including the complainant and the victim have been examined. She further submits that the petitioner does not deserve the concession of bail.

Heard.

After hearing learned counsel for the parties and perusing the record, it is apparent that the petitioner is behind bars since 14.10.2019. There is no medical examination of the victim. Besides this, both the material witnesses i.e. the victim and the complainant have not supported the case of the prosecution. Copies of their testimonies have been placed on record, which would read that the witnesses emphatically denied the complicity of the petitioner in the alleged offence. The material witnesses already stands examined. The Court finds that there cannot be any apprehension of tampering with the prosecution evidence by the petitioner in case bail is granted to him.

The veracity of the allegations would be evaluated by the trial Court only after conclusion of the trial. In the overall facts and circumstances of the case, I am of the opinion that learned counsel for the petitioner has been able to make out a case for grant of regular bail to the petitioner. Accordingly, the present petition is allowed and the petitioner is ordered to be released on bail to the satisfaction of the concerned trial Court/Duty Magistrate.

Nothing said herein shall be treated as an expression of opinion
on the merits of the case.

5.7.2022
sharmila

(RAJESH BHARDWAJ)
JUDGE

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