

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

CRM-M-6081-2022

Date of Decision: 11.7.2022

Krishna

..... Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Sandeep Verma, 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.91 dated 16.5.2018, registered under Sections 376, 511, 34 IPC and Sections 7 & 8 of POCSO Act, at Police Station Sarabha Nagar, Ludhiana.

As per factual matrix of the case, the FIR in question was lodged by mother of one of the victims. It was alleged in the FIR that her husband is a labourer and she has 8 children, out of which 5 are sons and 3 are daughters. Her daughter i.e. the victim (name concealed) was 6 years of age and second victim i.e. daughter of Vijay Saxena was 3 years of age and they were playing outside her room. Then, she saw that Krishna i.e. the petitioner was taking away the victim in haste. She opened the door and saw that Krishna's friend Prem had undressed both the victims and he had undressed himself as well. He was committing illicit acts with both the victims. On her raising hue and cry, Prem escaped from the place of occurrence. She found both the children frightened. A complaint was filed to take legal action against both the culprits. On the complaint filed, FIR in

question was lodged. On the commencement of the investigation, the petitioner was arrested on 16.5.2018. The petitioner approached the learned Additional Sessions Judge, Fast Track Special Court, Ludhiana (City) for grant of bail, who after hearing the parties, declined the same vide its order dated 4.12.2020. 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 submits that the petitioner is behind bars since 16.5.2018. He has submitted that though both the victims are of the age of 6 years and 3 years, however, the petitioner is being prosecuted for the offence of attempt to rape and for the offence under Section 8 of POCSO, 2012, for which maximum sentence could be 5 years. He submits that there is no medical conducted of victims and hence, except verbal allegations there is nothing on record to substantiate the allegations made by the complainant. He submits that the petitioner is a poor person and being the citizen of Nepal is languishing in jail for the last more than 4 years. He submits that his case before the trial Court is also being pursued by the Legal Aid Counsel. He submits that despite his being in custody for more than 4 years, there is no substantial progress in the trial. He submits that the petitioner is ready to abide by the terms and conditions imposed by this Court, if his prayer for bail is considered. He submits that the petitioner has no criminal antecedents and he has been implicated in this case falsely and frivolously. He submits that in the overall facts and circumstances, the petitioner deserves to be enlarged on bail.

Learned State counsel has opposed the submissions made by learned counsel for the petitioner and submitted that one of the victims has

supported the case of the prosecution in her statement recorded under Section 164 Cr.P.C. and as well as before the trial Court. However, she submits that there was no medical conducted of the victims. She submits that in all there are 19 prosecution witnesses, out of which only 3 witnesses have been examined so far.

Heard.

The Hon'ble Supreme Court in Satender Kumar Antil vs. Central Bureau of Investigation and another, in Misc. Application No.1849 of 2021 in Special Leave Petition (Crl.) No.5191 of 2021d decided on 11.7.2022, while discussing Section 309 Cr.P.C. i.e. "Power to postpone or adjourn proceedings" has observed as under:-

"41. Sub-section (2) has to be read along with sub-section (1). The proviso to sub-section (2) restricts the period of remand to a maximum of 15 days at a time. The second proviso prohibits an adjournment when the witnesses are in attendance except for special reasons, which are to be recorded. Certain reasons for seeking adjournment are held to be permissible. One must read this provision from the point of view of the dispensation of justice. After all, right to a fair and speedy trial is yet another facet of Article 21. Therefore, while it is expected of the court to comply with Section 309 of the Code to the extent possible, an unexplained, avoidable and prolonged delay in concluding a trial, appeal or revision would certainly be a factor for the consideration of bail. This we hold so notwithstanding the beneficial provision under Section 436A of the Code which stands on a different footing."

Further Hon'ble Supreme Court in Hussainara Khatoon and others vs. Home Secretary, State of Bihar, 1979 SCR (3) 169 has observed as under:-

“Speedy trial is of the essence of criminal justice and, therefore, delay in trial by itself constitutes denial of justice. Though speedy trial is not specifically enumerated as a fundamental right, it is implicit in the broad sweep and content of Art.21. Speedy trial which means reasonably expeditious trial, is an integral part of the fundamental right to life and liberty enshrined in Art. 21.”

Admittedly, the petitioner is behind bars since 16.5.2018 i.e. from the last more than 4 years. The petitioner is being prosecuted for the offence under Sections 376, 511 IPC and Section 8 of POCSO Act, 2012. So far the offences under Section 376 and 511 IPC are concerned, the same are on the basis of oral statement of the prosecution witnesses and there is no medical conducted. The final conclusion regarding the charges for which the petitioner is being prosecuted would be assessed by the trial Court only after the conclusion of the trial on appreciation of complete evidence produced by both the sides. There is no denial to the fact that the petitioner belongs to Nepal and is behind bars from the last more than 4 years. Admittedly, out of 19 prosecution witnesses only 3 witnesses have been examined so far. The Court cannot be oblivious of the fact that the petitioner cannot be denied the benefit of bail for an unlimited period. The prosecution could examine only three witnesses in the last four years. In the backdrop of the facts and circumstances of the case in hand, it is to be noted that bare perusal of Article 21 of Constitution of India makes it clear that the applicability of Article 21 is not just confined to Indian citizens only. Hence, speedy trial is the right of every accused irrespective of his nationality. Hence, keeping in view the overwhelming facts and circumstances of the case, the Court is of the opinion that the petitioner

deserves to be enlarged on bail. 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, who will ensure the furnishing of surety bonds by a local surety and Court will be at liberty to impose any other condition as it deems fit. The petitioner will not leave the country during the pendency of the trial.

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

11.7.2022

sharmila

(RAJESH BHARDWAJ)

JUDGE

Whether Speaking/Reasoned

:

Yes/No

Whether Reportable

:

Yes/No