

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

214

CRM-M- 8343-2021 (O& M)
Date of Decision: 02.05.2022

Gamdoor Singh

...Petitioner

Vs.

State of Haryana.

...Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr.Armaan Gagneja, Advocate for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

Mr. Gurjeet Brar, Advocate of the complainant.

RAJESH BHARDWAJ, J.(ORAL)**CRM-16227-2022**

Application is allowed as prayed for.

Certified copies of statements of PW1, PW2 and PW3 are taken on
record.

CRM-M- 8343-2021

The present petition is filed under Section 439 Cr.P.C. by petitioner-
Gamdoor Singh seeking grant of regular bail in case FIR No.33 dated
14.07.2020 registered under Section 323, 376 (3) and 450 and Section 4 of the
Protection of Children from Sexual Offences Act 2012 at Police Station
Women Dabwali, District Sirsa.

As per the factual matrix of the present case, the present FIR was lodged

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2022.05.04 10:39 by the victim wherein it was alleged that she was 14 years of age and remained
I attest to the accuracy and
integrity of this document

at home. On the intervening night of 13/14.07.2020 at around 12/12.30 her brother had come home from his work and she was preparing tea in the kitchen. At that time, Gamdoor Singh Son of Jarnail Singh had come to their home, he came behind her and caught hold the victim. Thereafter, when she started raising noise, then he slapped her and did wrong act with the victim. On raising noise, the people from the neighborhood gave beating to Gamdoor Singh. The FIR was lodged by the victim for taking legal action against the culprit. The statement of the victim was recorded under Section 164 Cr.P.C. on 15th July 2020 by learned SDJM Dabwali. The prosecutrix has supported her allegations as made in the FIR.

The petitioner was arrested on 14.07.2020 and he approached the learned Fast Track Special Court, Sirsa praying for the grant of bail.

After hearing the parties, the same was declined by learned Additional Sessions Judge, Fast Tract Special Court, Sirsa vide his order dated 21.10.2020.

Aggrieved by this, the petitioner has approached this Court for grant of regular bail.

Learned counsel for the petitioner vehemently contends that the petitioner has been falsely implicated in this case. He submits that the allegations in the FIR, pertain to the occurrence at home in the presence of family members, which are false and frivolous. He further submits that the offences, under the POCSO Act have been leveled by the victim allegedly being less than 18 years of age. He submits that he has disputed the age of the victim also. He contends that she was more than 18 years of age. He submits that after the completion of the investigation, the challan was presented, charges were framed and the trial Court has commenced with the examination of the prosecution witnesses. He further submits that the brother of the victim

her Bhabhi and the victim, herself have been examined by the trial court as PW1, PW2 and PW3 respectively. A copy of their depositions has also been placed on record. He vehemently contends that on the examination of all the witnesses, none of them supported the case of the prosecution, thus on the request of the public prosecutor they were declared hostile. He submits that all the three material witnesses have not supported the case of the prosecution. The allegations made against the petitioner hence proved to be false and frivolous. He submits that the petitioner has never been involved in any other criminal offence on the earlier occasion. He further submits that the petitioner is behind the bars since last about two years and in the facts and circumstances, he deserves to be granted bail.

Learned State counsel has opposed the submissions made by learned counsel for the petitioner and submits that the victim in this case is less than 18 years of age and thus being a minor, the presumption under Section 29 and 30 of the offence under POCSO Act is attracted against the petitioner. He further submits that the FSL report has revealed the presence of semen. However, he candidly acknowledges the material witnesses have not supported the case of the prosecution. He further submits that out of 16 witnesses only 05 including the material witnesses have already stands examined.

Heard.

The occurrence in question has taken place on intervening night of 13/14.07.2020. The victim had leveled the allegations of the offences as mentioned in the FIR. However, during the examination before the trial Court, the victim, her brother and bhabhi who have been examined as PW, PW2 and PW3 respectively and have been declared hostile as they did not support the case of the prosecution. A perusal of the statement made by the victim before

the Court would reveal that she did not know the accused present in the Court through video conference. She further deposed that she did not register the present FIR against the petitioner. Similarly on the same line her brother and bhabhi have also deposed. The veracity of the allegations would be appreciated by the trial Court on the basis of the evidence to be produced before it by the parties. However, the petitioner has no criminal antecedents prior to this case, the material witnesses stand examined and have not supported the prosecution.

In the totality of the facts and circumstances of the case where the challan has already stands presented and the trial of the case will take sufficient time to conclude and no useful purpose will be served by keeping the accused in custody for such a long period, I find that learned counsel for the petitioner succeeds in making out a case for grant of bail.

The present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate, Sirsa. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

(RAJESH BHARDWAJ)
JUDGE

02.05.2022

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