

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

110+227

**CRM-M-13434-2021 (O&M)**

**Date of Decision: 02.02.2022**

Amit

...Petitioner

Versus

State of Haryana

...Respondent

**CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL**

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

Mr. Rajiv Sidhu, DAG, Haryana.

*(proceedings conducted through video conferencing)*

**GURVINDER SINGH GILL, J. (Oral)**

**CRM-40928-2021**

For the reasons mentioned in the application, the same is allowed and the transcription annexed with the application is taken on record as Annexure P-5 subject to all just exceptions.

**CRM-M-13434-2021**

1. The petitioner has approached this Court seeking grant of regular bail in respect of a case registered against him vide FIR No.081 dated 12.03.2020 at Police Station Sadar Jind, District Jind, under Sections 377/450 IPC; Section 6 of the POCSO Act and Section 3 (2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.
2. The FIR in question was lodged at the instance of Chhaga, wherein it is alleged that his son (victim), aged about 17 years is disabled. It is alleged

- that on 11.03.2020, his son went to sleep in his room. On the morning of 12.03.2020, when he went to check up his son, he saw that one person was committing unnatural offence with his son. The complainant raised alarm, which attracted his brother Krishan. It is alleged that upon seeing them, the assailant tried to escape by jumping from the wall, but he fell down and was caught by the complainant and his brother. Upon enquiry, the said assailant disclosed his name as Amit. It is, thus, alleged that Amit (petitioner) had committed unnatural offence with the minor son of the complainant.
3. Learned counsel for the petitioner has submitted that he has falsely been implicated in the present case and that the assertion of the complainant that the victim was disabled cannot be accepted, as the victim is also assisting the complainant in running the grocery shop. It has further been submitted that when the statement of the victim was recorded in terms of Section 164 Cr.P.C. and when he was briefly quizzed by the Duty Magistrate before recording his statement, he gave answers to all the questions put to him, in a fairly intelligent manner and that from reading the said answers, it cannot be said that the victim is mentally disabled. It has further been submitted that the prosecution has failed to produce any disability certificate in respect of the victim.
  4. Learned counsel for the petitioner has further submitted that in fact the false implication of the petitioner is evident from the fact that the victim in his statement recorded in terms of Section 164 Cr.P.C. has stated that the petitioner had blamed him for the theft of a mobile phone amounting

- to Rs.30,000/-. Learned counsel has further submitted that the petitioner as well as the victim and his family were on good terms and there was regular exchange of conversation amongst them over phone. Learned counsel, in this regard, has drawn the attention of this Court to the transcript conversation annexed as Annexure P-5, which is stated to have been retrieved from CD (Annexure P-1). Learned counsel has submitted that a perusal of the said conversation clearly shows that the petitioner was very well known to the complainant and that somehow while getting the FIR lodged, he has been shown to be an unknown person, who upon enquiry disclosed his name as Amit.
5. Opposing the petition, learned State counsel has submitted that since serious allegations have been leveled against the petitioner and the victim in his statement recorded in terms of Section 164 Cr.P.C. and also statement recording during the proceedings of trial as well as other witnesses have duly supported the case of the prosecution, no case for grant of bail is made out. Learned State counsel has further submitted that no authenticity or reliance can be placed upon the conversation contained in the CD (Annexure P-1), as the same was never produced before the Investigating Officer. Learned State counsel has further informed that all the 5 eye-witnesses have already been examined and that as of now another 10 PWs remained to be examined. It has, however, been informed that the petitioner as on date has been behind bars since the last about 1 year & 11 months that he is not involved in any other case.

6. I have considered rival submissions addressed before this Court.
7. It is no doubt correct that serious allegations have been leveled against the petitioner. However, this Court also finds that in the statement of the victim recorded in terms of Section 164 Cr.P.C., there is no observation recorded by the Magistrate regarding 'mental disability' of the victim. In fact a perusal of the said statement would show that the victim has given answers to all the queries put to him like a normal person. A perusal of the said statement further shows that there is some reference to the allegations leveled by the petitioner against the victim on an earlier occasion pertaining to theft of a mobile phone amounting to Rs.30,000/-. A perusal of the transcripts of the audio conversation between the petitioner and the victim also tends to show that the victim is fairly normal and that there was some kind of friendship amongst them. The said CD was, however, never produced before the Investigating Officer. As such, this Court would not like to depend solely upon said conversation. Needless to mention, the petitioner/accused, however, would be at liberty to adduce evidence at the stage of recording defence evidence to establish the authenticity of the said CD/audio conversation.
8. In any case, the petitioner has been behind bars since the last about 1 year & 11 months and as has been informed by the learned State counsel, 5 eye-witnesses have already been examined. Conclusion of trial is likely to consume time as 10 PWs still remains to be examined. In these circumstances, without commenting any further as regards the merits of the case, this Court is of the opinion, further detention of the petitioner

will not serve any useful purpose. The petition, as such, is accepted and the petitioner is ordered to be released on regular bail on his furnishing bail bonds/surety bonds to the satisfaction of learned trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.

**02.02.2022**  
Vimal

**(GURVINDER SINGH GILL)**  
**JUDGE**

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