

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

Sr. No.115

CRR-437-2022

Date of decision: 12.07.2022

Gurjinder Singh

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Ms. Aashna Gill, Advocate
for the petitioner.

Mr. Sumit Jain, Addl. A.G., Haryana.

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DEEPAK SIBAL, J. (Oral)

Through the present petition challenge is made to the order dated 22.02.2022 passed by the Additional Sessions Judge, Fast Track Court under the Protection of Children from Sexual Offences Act, 2012, Ambala (for short – the Trial Court) through which an application filed by the petitioner seeking therein to be discharged has been dismissed. Also under challenge is the subsequent order of the Trial Court dated 24.02.2022 through which charges have been framed against the petitioner to face trial under Section 212 IPC.

The facts, in brief, which are required to be noticed for adjudicating upon the present petition are that on 12.09.2020 an FIR under Section 8 of the Protection of Children from Sexual Offences Act, 2012 (for short – the POCSO Act) was registered against one Gian Singh son of Pritam Singh. The allegations against him were of having sexually exploited

a minor girl. In the course of investigation of the said FIR, statement of the alleged victim was recorded before the Judicial Magistrate, Ist Class, Ambala under Section 164 Cr.P.C. In such statement she reiterated her allegations. On 28.09.2020, the Investigating Officer (for short – the IO) repeatedly raided the house of the main accused Gian Singh but he was not found there. Gian Singh's location was then sought to be traced through the Cyber Cell of the Haryana Police but to no avail. Thereafter, the IO conducted further searches to trace out Gian Singh but he continued to evade his arrest. Every time the IO raided Gian Singh's house he was assured by his wife Bhupinder Kaur and daughter Satvinder Kaur that as soon as they become aware of Gian Singh's whereabouts they shall produce him before the police. On 02.10.2020 the IO received secret information that Gian Singh had taken shelter in the house of his friend Fateh Singh in village Sardehri. Acting on such information, the IO conducted a raid on Fateh Singh's house but Gian Singh was not found there. On being questioned, Fateh Singh informed the IO that on 01.10.2020 at 8.00 p.m. Gian Singh, who was his friend, had come to his house and stayed for a night. However, in the morning of 02.10.2020 Gian Singh's daughter-Satvinder Kaur, his son-in-law-Arvinder Singh, his wife-Bhupinder Kaur and his wife's brother -Gurjinder Singh (petitioner) had come in a car and had taken him with them. Fateh Singh feigned ignorance with regard to lodging of the criminal case against Gian Singh at the time he had come and stayed with him on 01.10.2020. On the basis of Fateh Singh's statement, the police conducted further raids and investigations. In the course of such investigations, as per the State, Satvinder Kaur and Arvinder Singh daughter and son-in-law of Gian Singh cooperated with the police but his wife

Bhupinder Kaur and the petitioner did not. Later, the efforts by the police bore fruit and Gian Singh was arrested from Ambala. For having harboured/concealed Gian Singh and for not cooperating with the police for locating him, Bhupinder Kaur and the petitioner were sought to be prosecuted under Section 212 IPC. Investigations into the accusations against the petitioner and Bhupinder Kaur resulted in the police finding them guilty and accordingly a report under Section 173 Cr.P.C. was filed before the Trial Court through which both of them were sought to be charged under Section 212 IPC. At that stage, both Bhupinder Kaur and the petitioner filed separate applications before the Trial Court seeking their discharge. Relying on the statutory exception to Section 212 IPC Bhupinder Kaur being Gian Singh's wife was discharged by the Trial Court. However, the application filed by the petitioner was dismissed occasioning the challenge to such order through the instant petition.

Learned counsel for the petitioner contends that the Trial Court has erred in dismissing the application filed by the petitioner seeking therein his discharge because except Fateh Singh's statement there was no other evidence against the petitioner; a reading of Fateh Singh's statement does not disclose any offence under Section 212 IPC to have been committed by the petitioner and that even if Fateh Singh's statement is taken as the gospel truth, though vehemently denied, in the same similar allegations had been made against four persons namely Satvinder Kaur, Arvinder Singh, Bhupinder Kaur and the petitioner but without any reason the State has discriminated by giving a clean chit to Satvinder Kaur and Arvinder Singh but not to Bhupinder Kaur and the petitioner.

The afore submissions made on behalf of the petitioner though

attractive at first blush do not stand deeper scrutiny.

In **State of Karnataka vs. M.R. Hiremath 2019 (7) SCC 515**,

the Supreme Court observed as follows:-

“25. The High court ought to have been cognizant of the fact that the Trial Court was dealing with an application for discharge under the provisions of Section 239 Cr.P.C. The parameters which govern the exercise of this jurisdiction have found expression in several decisions of this Court. It is a settled principle of law that at the stage of considering an application for discharge the court must proceed on the assumption that the material which has been brought on the record by the prosecution is true and evaluate the material in order to determine whether the facts emerging from the material, taken on its face value, disclose the existence of the ingredients necessary to constitute the offence.”

In **State of Rajasthan vs. Ashok Kumar Kashyap, 2021 (11)**

SCC 191, the Supreme Court held as follows:-

“As observed hereinabove, the High Court was required to consider whether a prima facie case has been made out or not and whether the accused is required to be further tried or not. At this stage of framing of the charge and/or considering the discharge application, the mini trial is not permissible. At this stage, it is to be noted that even as per Section 7 of the PC Act, even an attempt constitutes an offence. Therefore, the High Court has erred and/or exceeded in virtually holding a mini trial at the stage of discharge application.”

From the afore extracted observations by the Supreme Court it is clear that at the stage of framing of charge/discharge of an accused, the Court is required to proceed on the assumption that the material brought on

record by the prosecution is true and after taking it on its face value is to determine if the necessary ingredients of the offence in question are there as also if a prima facie case is made out or not for the accused to face trial.

This Court shall now apply the afore principles enunciated by the Supreme Court to the facts of the present case to determine as to whether the Trial Court was justified to frame charges against the petitioner to face trial under Section 212 IPC.

On 12.09.2020, Gian Singh was accused of having molested a minor girl. However, he could be arrested by the police only on 06.10.2020 i.e. after 24 days. In the meanwhile, the police conducted several raids and searches but he successfully evaded his arrest. On receipt of secret information by the IO, on 02.10.2020, a raid was conducted at the house of one Fateh Singh who was Gian Singh's friend. During the course of such raid, Fateh Singh's statement under Section 161 Cr.P.C. was recorded by the police as per which on 01.10.2020 Gian Singh had come and stayed a night in his house. At that time Fateh Singh was not aware about Gian Singh's involvement in a criminal case. He further stated that on 02.10.2020, at 10/11 a.m., the petitioner, who is Gian Singh's brother-in-law, alongwith Satvinder Kaur, Arvinder Singh and Bhupinder Kaur came in car and took Gian Singh with them.

The afore-referred statement of Fateh Singh was made by him under Section 161 Cr.P.C. and forms part of the final report filed by the State before the Court under Section 173 Cr.P.C. In such statement Fateh Singh has clearly stated that on 02.10.2020, the petitioner, who is Gian Singh's brother-in-law, whisked away Gian Singh from his house. At that time Gian Singh was on the run and was accused of a serious crime. Gian

Singh could be arrested 04 days thereafter i.e. on 06.10.2020. At this stage, Fateh Singh's statement is enough to establish a prima facie case against the petitioner under Section 212 IPC.

Arvinder Singh and Satvinder Kaur were placed in the same boat as the petitioner by Fateh Singh. However, it is the specific stand by the State before this Court that Arvinder Singh and his wife Satvinder Kaur cooperated with the police to locate Gian Singh but the petitioner did not. Therefore, the State had chosen not to file a charge-sheet against Arvinder Singh and Satvinder Kaur. Thus, the petitioner's case is on a different footing from them.

In the light of the above discussion, the impugned order by the Trial Court warrants no interference.

Dismissed.

July 12, 2022
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(DEEPAK SIBAL)
JUDGE

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