

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No. 216

CRM-M-10305-2022(O&M)

Date of decision : 11.07.2022

Poonam Jain

..... Petitioner

VERSUS

State of UT Chandigarh

..... Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr.R.S.Rai, Senior Advocate, with
Mr.Prateek Gupta, Advocate,
Mr.Dushyant Rana, Advocate, and
Ms.Eknoor Sra, Advocate, for the petitioner.

Mr.Akashdeep Singh, Addl.PP, UT, Chandigarh.

DEEPAK SIBAL, J. (ORAL)

The present petition has been filed under Section 439 Cr.P.C. for the grant of regular bail in FIR No.14 dated 04.02.2022 registered under Sections 363, 366, 376(3), 120-B IPC, Section 6 of the Protection of Children from Sexual Offences Act, 2012 (Sections 4 and 5 of Immoral Trafficking Act added later on) at Police Station Manimajra, UT, Chandigarh.

Briefly stated, the case of the prosecution is that a FIR was registered by the Chandigarh Police against one Kunal @ Kallu. Such FIR was under Sections 363, 366, 376(3) IPC and Section 6 of the POCSO Act, 2012. The complainant in the said FIR was a 15 year old girl. She being a minor was counselled during the course of which she inter-alia disclosed that one Chanchal had taken her to the houses of various ladies where she was forced to do sexual acts for payment. On the basis of such statement the FIR in which the petitioner seeks regular bail was registered. Thereafter, the victim's statement under Section 161 Cr.P.C. was recorded as per which one of the ladies to whom Chanchal had taken the victim for sexual acts for payment was the petitioner. On such basis the petitioner was arrayed as an accused and arrested. After completion of the investigation the State filed its report under Section 173 Cr.P.C.

before the competent Court on the basis whereof the petitioner, alongwith her co-

accused was charge-sheeted to face trial under Sections 363, 366, 376(3) IPC, Section 6 of the POCSO Act, 2012 and Sections 4 and 5 of the Immoral Trafficking Act. In the trial which ensued the victim was produced as a witness for the prosecution and it is at that stage that the petitioner, through the instant petition, has knocked the doors of this Court for the grant of regular bail.

Learned senior counsel appearing for the petitioner submits that the petitioner is a respectable lady who has been falsely implicated in this case; she does not have any other criminal antecedents; the alleged victim while appearing before the Trial Court as a witness for the prosecution has specifically stated that it was not the petitioner who had made her indulge in any sexual or any other wrong act; the alleged victim after being declared hostile qua the petitioner was cross-examined by the State; during the course of such cross-examination she has deposed that the petitioner neither facilitated nor did she do any wrongful act with her and that in the light of the afore development further incarceration of the petitioner is wholly unnecessary.

Learned State counsel opposes grant of bail to the petitioner on the ground that the petitioner is accused of heinous offences and if released on bail she may influence the trial.

The relevant extract from the deposition of the alleged victim during the course of her examination-in-chief while appearing before the Trial Court as a witness of the prosecution is as follows: -

“xxx Chanchal also took me to the house of Meena Aunty, who also resides in Duplex Flat in Manimajra. She asked for my Aadhar card but I was not having the same so she asked me to leave but Chanchal aunty insisted that I am of the age of majority. Nothing wrong happened to me in the house of Meena Aunty. Suman Aunty, Raj Rani, Chanchal and Bengali aunty used to make me to do “Ganda Kaam”. I was made to do wrongful act for 2-3 months and in a day 5-6 times.

Accused Sumitra is produced in the court and has been rightly identified as Bengali Aunty.

Accused Suman is produced in the court and has been rightly identified as Suman Aunty.

Accused Poonam Jain is produced in the court and has been identified as Meena Aunty, who has not got done anything wrong from me.”

(emphasis supplied)

The alleged victim was declared hostile qua the petitioner and cross-

examined by the Public Prosecutor. During the course of such cross-examination she stated as under:-

“Witness is read over her statement Mark A portion from A to A1 and she stated that she never named Poonam Jain and she did not identify her before the police. Voluntarily, I do not remember any such name. It is correct that in my statement Mark A is correct to the extent that I had stated that Chanchal aunty has taken me to the house of Poonam Jain. Further, a male person was also present there but no wrongful act took place with me in the house of Poonam Jain and no money was given to me by Poonam Jain. It is wrong to suggest that I have stated in Mark A that Poonam Jain had given me money for developing sexual relations with a person. It is wrong to suggest that Poonam Jain had given money to me and Chanchal aunty for wrongful act. I recognized Poonam Jain shown to me in the court as the lady on whose flat in MHC, Manimajra, I was taken by Chanchal. Voluntarily, no wrongful act took place with me. It is wrong to suggest that I am deposing falsely being won over by accused. It is wrong to suggest that accused Poonam Jain had also facilitated my sexual abuse and paid money in lieu of the same.”

(emphasis supplied)

After considering the afore extracted statements made by the alleged victim and considering the fact that the petitioner is a 57 year old lady with no other criminal antecedents as also because not only is the investigation in this case complete but also that the alleged victim already stands examined before the Trial Court qua the alleged role of the petitioner, the present case is considered to be a fit one in which the petitioner be directed to be released on regular bail. Resultantly, subject to the satisfaction of the CJM/Duty Magistrate, Chandigarh the petitioner is directed to be released on bail.

It is clarified that the above observations have been made only for the limited purpose of deciding the present regular bail application and the same would not be construed to be an expression of opinion on the merits of the case.

11.07.2022
shamsher

[DEEPAK SIBAL]
JUDGE

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