

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

CRM-M-12688-2021 (O&M)

Date of Decision: 4.2.2022

Gurpreet Singh

..... Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Ankit Bishnoi, Advocate, for the petitioner.

Mr. B.S. Virk, Deputy Advocate General, Haryana.

Rajesh Bhardwaj, J. (ORAL)

Matter has been taken up through video conferencing via Webex facility in the light of the Pandemic Covid-19 situation and as per instructions.

CRM-28660-2021

This is an application for amendment of the petition by adding Sections 376, 451, 506 IPC and Section 4 of POCSO Act, 2012 in place of Sections 354-A, 363, 366-A, 451 IPC and Section 8 of POCSO Act, 2012.

Heard. The same is allowed and amended petition is taken on record.

Main case

Prayer in the present petition is for the grant of regular bail to the petitioner in a case FIR No.122 dated 22.9.2020, registered under Sections 376, 451, 506 IPC and Section 4 of Protection of Children from Sexual Offences Act, 2012, at Police Station Women, Sirsa, District Sirsa.

As per factual matrix of the case, the FIR in question was lodged by Rakesh Kumar son of late Mahavir Singh. It was alleged that on

21.9.2020, there was nobody at home, then one boy Gurpreet Singh son of Jajji Singh i.e the petitioner entered their house. His sister i.e. the victim (name concealed) aged about 15-16 years was alone in the house and he started harassing her. His Mama (Faquir Chand) and Mami (Pemal Devi) had come and they caught hold the boy on the spot and other persons also gathered. On seeing the family members, his sister i.e. the victim came out and the boy hid under the iron box. Thereafter, his sister went away from the home and could not be traced out till date. Request was made to trace her and take legal against the accused boy. The investigation commenced and the petitioner was arrested on 22.9.2020. The petitioner approached the learned Additional Sessions Judge/FTSC, Sirsa for grant of bail, who after hearing the parties, declined the same vide its order dated 22.2.2021. 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 has contended that the victim in this case is less than 18 years, however, the petitioner is also equally teenager and from the facts and circumstances of the case, both were having a love affair with each other. It is submitted that there was no coercion from the side of the petitioner, however, later on when the family members came on the spot, the petitioner was falsely implicated in this case in deliberated manner. He submits that under the POCSO Act, 2012, though there is presumption but the same is rebuttable. He further submits that now the material witnesses i.e. the victim, the complainant, maternal uncle and maternal aunt have been examined by the trial Court as PW-1, PW-2, PW-3 and PW-5, respectively. He has placed on the record the testimonies of all

these witnesses. He submits that none of these material witnesses have supported the case of the prosecution and hence, on the request of learned Public Prosecutor, they have been declared hostile. He submits that the case of the prosecution rests upon the evidence of the material witnesses, who have now resiled from their statements. As there is no other material evidence against the petitioner, further incarceration of the petitioner is unwarranted. He has submitted that in view of the facts and circumstances of the case, the petitioner be enlarged on bail.

Learned State counsel submits that the victim is minor and hence, even if she is consenting party, the same has no legal sanctity. He candidly acknowledges that the material witnesses have not supported the case of the prosecution. He submits that in all there are 20 prosecution witnesses out of which 9 including material witnesses have been examined. He also acknowledges the fact that all the material witnesses have not supported that case of the prosecution. In view of these facts, he submits that the petitioner does not deserve the concession of bail.

Heard.

Admittedly, the victim is minor. On the other hand, the petitioner is about 20 years of age and is behind bars since 22.9.2020. From the perusal of deposition of the witnesses, it is apparent that none of the material witness has supported the case of the prosecution. In all there are 20 prosecution witnesses, out of them majority of the material witnesses already stands examined. The veracity of the allegations and counter-allegations would be evaluated by the trial Court only after conclusion of the trial. The trial of the case will take sufficiently long time and no useful

purpose will be served by keeping the petitioner in custody for such a long time. In the overall facts and circumstances of the case, I am of the opinion that learned counsel for the petitioner has been able to make out a case for grant of regular bail to the petitioner. 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. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

4.2.2022
sharmila

(RAJESH BHARDWAJ)
JUDGE

Whether Speaking/Reasoned	:	Yes/No
Whether Reportable	:	Yes/No