

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

(103)

CRM-M-16819-2022  
DATE OF DECISION:- 05.05.2022

**ADARSH TIWARI****...PETITIONER****VERSUS****STATE OF PUNJAB AND OTHERS****...RESPONDENTS****CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL**

Present: Mr. B.R.Rana-I, Advocate for the petitioner.

Mr. A.S.Gill, Senior DAG, Punjab for the State.

**SUVIR SEHGAL, J. (ORAL)**

Vide the instant petition filed under Section 438 of the Code of Criminal Procedure, 1973 (for short “the Code”), the petitioner seeks grant of anticipatory bail in case FIR No.157 dated 29.08.2021, registered for offences under Sections 363, 366-A, 34, 376 and 506 of the Indian Penal Code, 1860 and Section 4 of Protection of Children from Sexual Offences Act, 2012 (for brevity “the POCSO Act”) at Police Station Sahnewal, District Ludhiana, Annexure P-1.

As per the version of the prosecution, FIR, Annexure P-1, has been registered on the statement of mother of a fourteen year old school going girl (for the sake of convenience hereinafter referred to as “minor prosecutrix”) on the allegation that on 18.07.2021 when she came back home from her work, she found that her youngest daughter was missing. On 14.08.2021, some unknown persons, brought her daughter home and told her that she was found walking at Eastman Chowk. On enquiring, her daughter told her that a person, named, Adarsh Tiwari, present petitioner, who was her friend on Facebook, in connivance with

his friend, Satyam Kumar Dubey, enticed her on the pretext of marriage, took her to Sherpur Market where Adarsh Tiwari had a room on rent and kept her there for 20-25 days and told everyone around that she is the sister of Satyam Kumar Dubey. He sexually assaulted her on numerous occasions. The complainant did not disclose the incident to anyone for a few days as she was ashamed.

Counsel for the petitioner has contended that the petitioner has been falsely framed in a concocted story as there is an unexplained delay of 42 days in the registration of the FIR. He submits that the petitioner is above 18 years of age and her date of birth as per Aadhar Card, Annexure P-2, is 01.01.2003. By referring to the affidavits, Annexure P-3 and P-4, counsel contends that both the informant as well as the minor prosecutrix have executed affidavits in favour of the petitioner.

*Per contra*, learned State counsel upon instructions from HC Dharampal, has opposed the petition by making a reference to the allegations in the FIR as well as to the statement of the minor prosecutrix recorded under Section 164 of the Code and her medication examination.

I have considered the submissions made by counsel for the parties.

Petitioner is accused of sexually assaulting a fourteen year old girl, who has supported the allegations in her statement recorded before the Magistrate. Even in the narration of the incident given to a Doctor at the time of her medical examination, the minor prosecutrix has reiterated the allegation. Reliance placed by the counsel for the petitioner on the affidavits, Annexures P-3 and P-4, would be of no help to him as it is difficult to determine, at this stage, as to whether the affidavits have

been voluntarily executed or they have been signed under compulsion or coercion. A cursory look at both the affidavits show that no one has identified the executants before the Attesting Authority as there are no signatures of the identifier under the stamp “I know the deponent/executant and he/she has signed in my presence”. In any case, the affidavits as well as the Aadhar Card would remain a matter of trial and this Court is not required to conduct a mini trial at this stage.

It deserves to be noticed that the petitioner and the co-accused had filed a petition seeking quashing of the FIR on the basis of the said affidavits, but when the counsel was confronted with the statement of the minor prosecutrix recorded under Section 164 of the Code, the petition was withdrawn vide order dated 28.02.2022. The petitioner, for reasons best known to him, has not disclosed this fact in this petition.

Keeping in view the nature of allegations, gravity of offence, severity of punishment likely to be imposed in case the petitioner is convicted, this Court is of the opinion that the concession of pre-arrest cannot be extended to the petitioner.

Finding no merit in the petition, it is hereby dismissed.

It is clarified that nothing said hereinabove shall be construed to be an expression of the opinion on the merits of the case.

(SUVIR SEHGAL)  
JUDGE

05.05.2022  
*Kamal*

|                            |         |
|----------------------------|---------|
| Whether speaking/ reasoned | Yes/ No |
| Whether Reportable         | Yes/ No |