

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

213

CRM-M-17139 of 2022 (O & M)

Date of decision : 16.05.2022

Harbans Singh

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Aditya Sanghi, Advocate for the petitioner.

Ms. Deepshikha Chauhan, AAG, Haryana, for the respondent-State.

SUVIR SEHGAL, J.

Instant petition has been filed under Section 438 of the Code of Criminal Procedure, 1973, (for short - 'the Code') seeking grant of concession of pre-arrest bail to the petitioner in case arising out of FIR No.3 dated 15.02.2022 lodged for offences under Section 328, 365, 506, 376 (2) (n), IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (for short –“the POCSO Act”) at Police Station Women, Dabwali, District Sirsa, Annexure P-2.

Version of the prosecution is that FIR has been registered on the statement of a 17 year old school going girl (hereinafter for brevity referred to as “the prosecutrix”). The girl has three siblings and her parents are daily wage labourers. Her neighbour, Harbans Singh, present petitioner, used to visit her house frequently and was a good friend of her father. She trusted him and used to address him as uncle. On 10.09.2021, he came at about 8.00 pm, drunk alcohol with her father and stayed till late. She fed them food and thereafter her father went to sleep. When she sat to eat, he gave her cooked vegetables and on consuming them, she started feeling dizzy and went to sleep. When she came to her senses, she found herself naked in a white car parked in open field away

from her home and Harbans Singh, who was next to her, was taking off his Pajama. She tried to free herself, however, he sexually assaulted her thrice, threatened to eliminate her and her brothers in case she disclosed the incident to anyone. Harbans forced her to take a white pill and told her that she will not have any problem. He left her back home at 2.30 am. She did not wake her father due to fear and went to sleep. She remained nervous for days together and on her mother persistence inquiries, she revealed the entire incident to her, who disclosed it to her father. They went along with the prosecutrix to the SP and made a complaint. They were called to the police station but as she was scared, they came back home. Noticing her condition, her mother took her to her paternal village where they again got a call but they did not go to the police station and kept silent apprehending public humiliation. However, Harbans kept on repeatedly threatening her and she again submitted an application to SP on 04.02.2022 and she was called to the police station on 14.02.2022, where her statement was recorded.

Counsel for the petitioner has argued that the prosecutrix has submitted different complaints with different versions over the period of time. In particular he has made a reference to the report dated 22.03.2021 prepared at the police station wherein it has been recorded that no action requires to be taken on the above complaint. Reference has also been made by the counsel to the complaint dated 11.11.2021, Annexure P-6, by the father of the prosecutrix, which was withdrawn by him. He made a statement, Annexure P-8, that the complaint given by him was on instigation and he does not want any legal action. By relying on Identity Card issued by the Government of Haryana, Annexure P-9, counsel asserts that the date of birth of the prosecutrix is 01.01.2003 and as she had attained the age of majority on the date of the alleged incident, offence under the POCSO Act are not attracted.

Per contra learned State counsel has opposed the petition upon instructions from SHO Seema and by placing reliance upon the status report filed by way of affidavit of Deputy Superintendent of Police, Dabwali has urged that school certificate of the prosecutrix shows her date of birth to be 20.11.2004 and as such she was below 17 years on the date of the alleged shameful occurrence. Reliance has also been placed by her upon the statement of the prosecutrix recorded under Section 164 of the Code, Annexure R-2, as well as upon the MLR, Annexure R-1.

I have considered the arguments addressed by counsel for the parties and have examined the paper book as well as the documents appended therewith with their able assistance.

There are categoric allegations against the petitioner, who is alleged to have sexually assaulted a young girl and has breached her trust and faith in him. The allegations levelled by the prosecutrix have been duly supported by her in her statement, Annexure R-2, recorded before the Magistrate. Even in the narration of the incident as recorded by the doctor in the MLR, Annexure R-1, shows that the prosecutrix has been sexually assaulted on 10.09.2021. The alleged delay in the FIR is apparently due to the fact that the petitioner had been threatening and intimidating her and probably even influenced her father to withdraw the complaint lodged by him. It deserves to be noticed that when confronted with the statement of the father, the prosecutrix showed her ignorance and stood firm on the allegation. This fact has been recorded by the learned Additional Sessions Judge in order dated 18.04.2022, Annexure P-1. The petitioner comes across as a man, who yields influence and is likely in a position to prevail over the prosecutrix and her father-complainant.

Keeping in view the nature of allegations levelled against him, the gravity of offence alleged to have been committed by him, the severity of

punishment likely to be imposed in case he is convicted, presumption under Section 29 of the POCSO Act and his probable authoritative position, this Court is not inclined to grant the concession of pre-arrest bail to him.

Petition being without any merit and is hereby dismissed.

Needless to mention, any observation made hereinabove shall not be construed to be an expression of opinion on the merits of the case.

16.05.2022
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(SUVIR SEHGAL)
JUDGE

Whether Speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No