

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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**CRM-M-22809 of 2022
Date of Decision:25.07.2022**

Narinder Kumar

---Petitioner

versus

State of Punjab

---Respondent

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: Mr. Vijay Lath, Advocate
for the petitioner

Ms. Amarjit Kaur Khurana, DAG, Punjab

VINOD S. BHARDWAJ, J. (ORAL)

The instant petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 by the petitioner for seeking concession of regular bail in case bearing FIR No. 0137 dated 08.07.2021 under Section 67-B of the Information Technology Act, 2000 and Section 15 of the Protection of Children from Sexual Offence Act, 2012 (hereinafter referred to as “POCSO Act”) registered at Police Station City Rupnagar, District Rupnagar.

As per the prosecution story, Memorandum Cyber tipline and child victim identification program is operated by National Center for Missing & Exploited Children (NCMEC) which is private, non profit 501 (C)(3) organization to serve as a national clearing house and resource center for families, victims, private organizations and the public on missing and sexually exploited child issues. NCMEC makes information submitted via Cyber tipline and child victim identification program available to law

enforcement and also uses this information to help, identify trends and create child safety and prevention messages. 19 tiplines were received from Ministry of Home Affairs, New Delhi for necessary action by the office of SSP, Rupnagar, upon which after seeking prior approval from the competent authority, CD containing tipline number 72122374 having facebook link <http://www.facebook.com/laddikashyap123> was watched by Cyber Cell, District Rupnagar. The Cyber Cell, Rupnagar logged in on the aforesaid facebook link and found that one pornography video of child was uploaded on the facebook messenger from Rupnagar and further found that the said account was linked with cell phone No. 83603-09101. The information from the service provider of the said cell phone was obtained and it was found that the said cell phone number belonged to petitioner Narinder Kumar son of Dalip Kumar resident of H.No. 2921/08H, Gurbax Colony, Rupnagar. After watching the record of the tipline, it was found that the video on the tipline was uploaded from the facebook account of the petitioner-Narinder Kumar.”

Learned counsel for the petitioner contends that the facebook account of the petitioner has been misused. Further, the petitioner has been arraigned as an accused for offence under the POCSO Act, however, nothing is borne out from the FIR or the investigation that the person picturized in the said video is a child within the meaning of POCSO Act. He further contends that the investigation in the case is complete and that the custodial detention of the petitioner is not required any further for conclusion of the investigation. He submits that no evidence has been recorded before the Court and that the petitioner undertakes to appear

before the Trial Court on each and every date so fixed, unless exempted by the Court, by an order on an application, if so moved.

Per contra, learned State counsel has contended that the complaint was verified by a Senior Police Officer and that upon conclusion of the investigation, it has come on record that objectionable videos were uploaded on the facebook account of the petitioner. She, however, could not refer to any document which is a part of the investigation to demonstrate as to how the age of the person seen in the video was determined. It is also not disputed that the petitioner does not suffer from any criminal antecedents and that no evidence has been recorded so far.

I have heard learned counsel appearing on behalf of the respective parties and have gone through the record with their assistance.

Taking into consideration the circumstances noticed above and the fact that the petitioner has no criminal antecedents; actual custody period of the petitioner and the absence of the Investigating Officer to refer to any material on record to determine the age of the person so seen in the video so as to make out the offence punishable under the POCSO Act, the instant petition is allowed and the petitioner is ordered to be released on bail on his furnishing requisite bail bond/surety bond to the satisfaction of the Trial Court/Duty Magistrate, concerned.

It is made clear that the petitioner shall not extend any threat and shall not influence any prosecution witnesses in any manner directly or indirectly.

The observation made hereinabove shall not be construed as an expression on the merits of the case and the trial Court shall decide the case

on the basis of available material.

The petition is allowed.

(VINOD S. BHARDWAJ)
JUDGE

25.07.2022

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No