

CRM-M-25310-2021 &
CRM-M-25384-2021

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235(2 cases)

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1. CRM-M-25310-2021
Date of Decision: January 28, 2022

Jatinder Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

2. CRM-M-25384-2021

Manjinder Singh @ Bittu

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR.JUSTICE RAJESH BHARDWAJ

Present: Mr.Ashok Paul Batra, Advocate, for the petitioners.

Mr.Rakeshinder Singh Sidhu, AAG, Punjab.

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RAJESH BHARDWAJ, J.

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

Both these petitions are being decided by this common order as the same have arisen out of same FIR.

This is the third petition by petitioner-Jatinder Singh and second petition by petitioner Manjinder Singh @ Bittu under Section 439 Cr.P.C.

praying for grant of regular bail to them in case FIR No.0028, dated 05.02.2020, under Sections 354, 354-A IPC, Sections 384 and 120-B IPC added later on, Section 506 IPC for which charge has been framed and Section 8 of the Protection of Children from Sexual Offence Act, 2012, registered at Police Station City Rupnagar, District Rupnagar, Punjab.

Succinctly, the facts of the case are that the prosecutrix (name concealed), who is 16 years of age, had filed a complaint to the Child Welfare Committee, Rupnagar wherein it was alleged that she was studying in Sahibzada Ajit Singh Academy three years ago. They were residing in the house of landlord Paramjit Singh at H.No.3414, Gali No.7, Adarsh Nagar. His son Jatinder Singh attempted to commit forcefully objectionable act with her. When she used to go to Supriya for studying, they used to give her cigarette, alcohol and other injections forcibly. She was given alcohol after mixing something in it and there was something in the cigarette, which they used to put it in the same with the help of foil paper. When she appeared before the Child Welfare Committee for giving her statement it was stated by her that she could not disclose the acts committed with her by the accused in her house as the family members would be angry with her. She alleged that Supriya recorded her objectionable video and blackmailed her by way of the same and extorted money and ornaments. It was further alleged that her objectionable videos were uploaded in her group and all the co-accused namely, Manjinder Singh (Bittu), Jaswinder Singh, Jatinder Singh(sonu), Paramjit Kaur (Simran) and Jaspreet Singh Bains are having this video in their phones. Request was made to take the legal action against the culprits. Both the petitioners were arrested on 06.02.2020. Both

the petitioners approached the learned Additional Sessions Judge, Rupnagar, separately, for grant of bail and the same were declined vide separate orders, dated 14.10.2020 and 04.05.2020 respectively.

Petitioner Jatinder approached this Court on earlier two occasions as well for grant of bail and the same were dismissed as withdrawn vide orders dated 10.06.2020 and 11.08.2020 respectively. So far as petitioner-Manjinder Singh is concerned, his petition was also dismissed as withdrawn vide order dated 10.06.2020. Now again, the petitioners have approached this Court.

Learned counsel for the petitioners has vehemently contended that the petitioners have been falsely implicated in this case. It is submitted that they are very well reputed persons of the society. He has contended that the alleged occurrence took place three years ago and after due deliberations, the present FIR has been registered. It is contended that as per the allegations, the family of the prosecutrix was living as tenant in the house of Paramjit Singh, who is father of petitioner-Jatinder Singh. He submitted that it was due to the dispute of the landlord-tenant that the present FIR was lodged. He further submits that no offence, as alleged, is made out against the petitioners as there is no evidence on record to substantiate the allegations against the petitioners. He submits that the sample was collected through swabs by the Investigating Agency and the same was sent for DNA profile. He vehemently contends that DNA report has been received and the same is found negative. He further contends that there is no other medical evidence to support the bald allegations made by the prosecutrix. Both the petitioners are languishing in jail since 06.02.2020 and now the prosecutrix

has been examined and hence there cannot be any type of threat apprehended against the petitioners for influencing the witnesses. He further submits that the co-accused Supriya, who is the main accused, as per the allegations in the FIR has already been granted anticipatory bail by this Court vide order dated 20.02.2020, Anenxure P2, and hence both the petitioners deserve to be granted bail. It is submitted that the prosecutrix has been examined by the trial Court and though during examination-in-chief she has supported the case of the prosecution, however, during cross-examination she has demolished the case of the prosecution and hence false implication of the petitioners is writ large.

On the other hand, learned State counsel has vehemently opposed the submissions made by the counsel for the petitioners. He has submitted that the prosecutrix was less than 15 years of age at the time of occurrence. He has relied upon the status report filed by the Investigating Agency in which details of the upto date investigation and trial have been given. He has drawn attention of this Court to the status report dated 17.01.2022. He submits that in all there are six accused in this case, the detail of whom is as follows:-

Total accused in the case (6) six	Challan presented	In custody or on bail
1.Manjinder Singh @ Bittu	On 27.03.2020	In custody (since 06.02.2020)
2.Jatinder Singh @ Sonu	On 27.03.2020	In custody (since 06.02.2020)
3.Supriya Goriya @ Priya	On 27.03.2020	On bail
4.Jaswinder Singh	On 22.05.2021	In custody (since 01.04.2021)
5.Paramjit Kaur	On 22.05.2021	In custody (since 01.04.2021)
6.Jaspreet Singh Bains	Not arrested yet	Not arrested yet

Learned State counsel has further submitted that as per the allegations, petitioner-Jatinder Singh had played a crucial role in committing

the offence with the minor prosecutrix. As per the allegations he has been outraging the modesty of the minor victim and exploiting her situation as a tenant in their house. Not only this, once she shifted from their house, he kept on committing the offence even thereafter. Equally, the petitioner-Manjinder Singh had joined hands with the co-accused and compelled the victim for stealing the jewellery of her mother and *massi* and thereafter grabbed the money received by selling the stolen jewellery. There are also allegations of compelling the victim taking drugs and alcohol by the accused and the petitioners. There are allegations against the petitioner-Manjinder that the nude video of the victim, which was made by co-accused Supriya, was also received from Manjinder and he blackmailed her for making the video viral. The statement of the victim was recorded under Section 161 Cr.P.C. and thereafter under Section 164 Cr.P.C. on 07.02.2020. He has further submitted that the prosecutrix has given minute details of the specific roles played by the petitioners in destroying her life. He submits that the occurrence with the victim has taken place three years ago and hence even if the DNA report is found negative, the same is of no consequence as there is a huge gap between the occurrence and that the date on which the sample was taken. He submits that in all there are six accused out of which only one co-accused, i.e. Supriya, is on anticipatory bail whereas one of the accused, namely, Jaspreet Singh Bains could not be arrested till date. So far as rest of the four accused are concerned, they are in custody. He submits that in all there are 20 witnesses out of which only prosecutrix is examined till date who has duly supported the case of the prosecution. As there are serious allegations against the petitioners and the prosecutrix is a minor,

there are chances that releasing the petitioners on bail would be detrimental to the ongoing trial. Learned State counsel further submitted that during cross-examination, the prosecutrix had made contradictions qua co-accused Jaswinder Singh and hence, she was declared hostile only on that account otherwise she has totally supported the case against rest of the co-accused including both the petitioners.

Heard.

It is apparent from the facts of the case that the prosecutrix/victim is a minor. Besides the offences under Sections 354, 354-A, 384, 120-B and 506 IPC, Section 8 of the POCSO Act is also there. Needless to say that there are statutory provisions regarding the presumption as to certain offences and for the culpable mental state in the Act itself and the relevant provisions reads as under:-

“Section 29 - Presumption as to certain offences.-Where a person is prosecuted for committing or abetting or attempting to commit any offence under sections 3, 5, 7 and section 9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be unless the contrary is proved.

Section 30 - Presumption of culpable mental state.- (1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the Special Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

(2) For the purposes of this section, a fact is said to be proved only when the Special Court believes it to exist beyond reasonable doubt and not merely when its existence is

established by a preponderance of probability.”

A perusal of the FIR and that of the deposition of the victim before the trial Court would attract the presumption for the *prima facie* complicity of the petitioners in this case. As evident from the status report filed, out of the total six accused, the co-accused Jaspreet Singh Bains is yet to be arrested. The prosecutrix has duly supported the case of the prosecution against both the petitioners. In all there are 20 witnesses out of which only one has been examined so far. In the overall facts and circumstances, the allegations against the petitioners are serious in nature. Co-accused Supriya though has been extended the benefit of anticipatory bail, however, the Court cannot turn blind eye to the overall facts and circumstances of the case wherein one of the co-accused, namely, Jaspreet Singh Bains is still evading the arrest. Another fact is that the victim has reported the case after three years of the occurrence. Whether she was prevented from knocking the door of the concerned statutory authorities or it was done deliberately, would depend upon the outcome of the trial. The Court cannot allow the ongoing trial to be vitiated in any manner.

In view of the attending circumstances, granting the benefit of bail to the petitioners would prejudice the ongoing trial. The veracity of the allegations would be ascertained by the Trial Court, on the basis of the scrutiny of the evidences led by both the sides. Keeping in view the overall facts and circumstances of the case, this Court is not inclined to grant bail to the petitioners and hence decline the prayer made in both the petitions.

Both the petitions are dismissed.

However, as the petitioners are behind bars from the last about

Nothing expressed hereinabove would have any bearing on the merits of the case pending before the trial Court.

January 28, 2022
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(RAJESH BHARDWAJ)
JUDGE

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| 1. | Whether speaking/reasoned ? | Yes/No |
| 2. | Whether reportable ? | Yes/No |