

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

(107)

CRM-M-24858-2022

Date of decision: 01.06.2022

Manish Kumar

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Aashish Pundir, Advocate
for the petitioner.

Ms. Mahima Yashpal, Deputy Advocate General,
Haryana for respondent-State.

...

SUVIR SEHGAL, J (Oral)

Vide the instant petition filed under Section 438 of the Code of Criminal Procedure, 1973 (for short “the Code”), petitioner seeks grant of anticipatory bail in FIR No.105 dated 29.04.2022, registered for offences under Sections 341 and 509 of the Indian Penal Code, 1860 and Sections 8 of 12 of the Protection of Children from Sexual Offences Act, 2012 (for short “the POCSO Act”), at Police Station Shahzadpur, District Ambala (Annexure P-1). However, Section 8 of POCSO Act has not been mentioned in the petition.

Version of the prosecution is that FIR (Annexure P-1) has been registered on the statement of a 16 year old school going

girl (hereinafter referred to as “the prosecutrix”) on the allegation that accused, Pintu, who resides near her home, had stalked her and had molested her after entering her house, which incident was brought to the notice of her father. When Pintu did not desist from the objectionable activity, a complaint was given in Women Police Station, Narayangarh and a case was registered. Later on, on the intervention of respectable persons, a compromise was effected, Pintu promised to behave himself and the complaint was withdrawn. However, Pintu nursed a grudge and he along with his friends, Sandeep, Manish Kumar (present petitioner) and Ankush started harassing her and obstructing her passage to school. They molested her, uttered filthy abuses and used derogatory language against her. On 27.04.2022 at about 09.00 p.m., when she was going to the market with her father on a motor cycle, all the accused, who were inebriated, stopped them. Sandeep, Manish Kumar and Ankush hurled abuses at her and her father, misbehaved with them, molested her, held her by arms and tore her clothes. When her father tried to intervene, Sandeep and Manish Kumar hit her father and Ankush tried to kill them. Accused threatened that they will kidnap the prosecutrix. When an alarm was raised, people started gathering and the accused fled away.

Counsel for the petitioner has contended that the petitioner has been falsely framed. It is his argument that the prosecutrix was having an affair with Pintu, which was not to the liking of her father and not only Pintu, but also his friends, have been deliberately named in the FIR. By referring to para 5 of the petition,

it has been submitted that on 27.04.2022, though hot words were exchanged between the parties, yet the incident, as alleged, never took place.

Per contra, State counsel has opposed the petition. Upon instructions from L/SI, Kulwinder Kaur, she submits that the prosecutrix has supported the allegations levelled in the FIR in her statement recorded under Section 164 of the Code. Upon further instructions, she submits that date of birth of the prosecutrix is 26.06.2006 and she was a minor on the date of the alleged incident. She further submits that matter is under investigation and statements of witnesses present at the spot have been recorded.

I have considered the submissions of the counsel for the parties.

In the allegations levelled in the FIR, the prosecutrix has specifically named the petitioner and has mentioned repeated instances of molestation and intimidation at the hands of the petitioner and co-accused, who are his friends. The allegations have been supported by her in her statement recorded before the Magistrate. Prosecutrix is a young girl, who is a secondary school student, and was below the age of 16, when the alleged occurrence took place. The argument raised by counsel for the petitioner will remain subject matter of trial. Petitioner has not disclosed that Section 8 of POCSO Act has been invoked by the Investigating Agency, which entails a punishment of upto 5 years, besides imposition of fine.

Keeping in view the totality of facts and circumstances, nature of allegations levelled, gravity of offence, age of the prosecutrix, repeated instances of sexual harassment and assault as well as presumption under Section 29 of the POCSO Act, this Court is not inclined to extend the concession of anticipatory bail to the petitioner.

Finding no merit in the petition, it is ordered to be dismissed.

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

(SUVIR SEHGAL)
JUDGE

01.06.2022
Pardeep

Whether speaking/ reasoned	Yes
Whether Reportable	Yes