

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-37157-2021 (O&M)
Date of decision: 10.03.2022

Jag Jiwan

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Saurabh Dalal, Advocate
for the petitioner.

Mr. Himmat Singh, DAG, Haryana.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this 2nd petition is for grant of regular bail in FIR No.0266 dated 13.11.2020 under Sections 377, 511 IPC and Section 8 of POCSO Act (Section 8 of POCSO Act was deleted and Sections 6/18 of POCSO Act were added later on), registered at Police Station Civil Lines Rohtak, District Rohtak; earlier one was dismissed as withdrawn on 15.03.2021.

Learned counsel for the petitioner submits that new ground for filing this second petition is that one eyewitness Devvart has been examined as PW1 and he has not supported the prosecution version. It is further submitted that as per allegations in the FIR, registered at the instance of Harka Bahadur resident of Nepal, he is tenant in Kamal Colony, Rohtak. He received an

information that a person has tried to commit unnatural act with his son in public toilet. When he reached the park, a boy was caught by the public and he told his name as Jag Jiwan (petitioner). Thereafter, the victim was taken to the hospital for medical examination and as per MLR of the victim recorded by the doctor, there is no history of sexual assault, however, the parents and child have stated that there is a history of stripping of the upper shirt only by an unknown person.

Learned counsel has further submitted that the victim as well as his father-complainant have left the place and they are not traceable and are not appearing before the trial Court. It is also submitted that one of the witness PW1 Devvart has not supported the prosecution version and was declared hostile and even denied the contents of his statement Ex.P1 made to the police. It is next submitted that the petitioner is in custody for the last about 01 year and 04 months; he is first offender and since conclusion of the trial will take some time, he may be granted the concession of regular bail.

Status report by way of affidavit of Deputy Superintendent of Police, Rohtak is on record, in which, after verifying the contents of the FIR, it is stated that 10 prosecution witnesses have been examined and statement of the victim is recorded under Section 164 Cr.P.C. by the Illaqa Magistrate on 26.11.2020, wherein he stated that when he had gone to toilet, a person showing him a screw driver, put a cloth on his mouth and putt off his clothes and he was going to do wrong act with him, but could not do the same, as the persons rescued him. It is also stated that the complainant and his family have shifted to some other place and efforts are being made to trace them out.

Learned State counsel, on the basis of custody certificate dated 09.03.2022 filed in the Court today, has not disputed the factual position.

After hearing learned counsel for the parties, without commenting anything on merits of the case and considering the custody of the petitioner and also in view of the fact that victim and his father-complainant are not traceable by the police for recording their statements, this petition is allowed and the petitioner is directed to be released on regular bail subject to furnishing his bail/surety bonds to the satisfaction of the trial Court/Illaqa Magistrate/Duty Magistrate, concerned.

Petition is disposed of.

[ARVIND SINGH SANGWAN]
JUDGE

10.03.2022
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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No