

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-1179-2022 in/and CRM-M-38699-2021

Date of Decision: 17.01.2022

Aman @ Sanam

.....Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR.JUSTICE ARUN PALLI,

Present: Mr. Ashwani Nagra, Advocate, for the petitioner.

Mr. Saurabh Girdhar, AAG, Haryana.

(The aforesaid presence is being recorded through video conferencing since the proceedings are being conducted in virtual Court).

ARUN PALLI, J. (Oral):

CRM-1179-2022

Application is allowed.

Documents are taken on record as Annexures P/8 and P/9.

CRM-M-38699-2021

Vide this petition under Section 439 of the Code of Criminal Procedure, the petitioner prays for a regular bail in FIR No 166 dated 7.3.2020, registered under Section 8 of the Protection of Children from Sexual Offences Act, 2012, (for short, 'the Act') and later on added Sections 376AB and 511 of the Indian Penal Code (Section 8 of the Act deleted and Section 6 read with Section 18 of the Act, has been inserted) at Police Station Karnal City, District Karnal.

In brief, as per the prosecution version: the victim, who happens to be a minor and was barely 8 years of age at the time of occurrence, used to go for a dance class at Krishna Dance Studio. And the petitioner, who ran the said academy, sexually assaulted the victim and touched her private parts.

Learned counsel for the petitioner submits that *ex facie*, implication of the petitioner is false. He submits that besides the victim, there were several other girl students in the class and many other commercial establishments were housed in the same building. But none noticed the alleged occurrence, nor saw the victim accompanying the petitioner to the third floor. He submits that in the statement of the victim

and her parents, the petitioner is alleged to have only touched the prosecutrix with a bad intention. But without any penetration. Thus, he cannot be said to have committed any aggravated penetrative sexual assault, and therefore, no offence under Section 6 read with Section 8 of the Act is made out. And, at best, the petitioner could be accused of a sexual assault, punishable under Section 8 of the Act. Further, as there was no medical record as regards any aggravated penetration, no offence under Section 376AB IPC and Section 6 read with Section 18 of the Act was made out either. It is urged that petitioner has been in custody for a long time and as nothing is to be recovered from him, no purpose is being served by keeping him behind the bars.

As oppose to this, learned State counsel submits that the victim was barely 8 years of age at the time of occurrence and the allegations made against the petitioner are serious in nature. In reference to the statement of the victim recorded under Section 164 Cr.P.C., he submits that offence under Section 6 read with Section 18 of the Act is clearly made out. Further, charges have been framed against the petitioner under Section 10 of the POSCO Act and in the alternative under Section 354 IPC; and under Section 6 read with Section 18 of the Act, and in the alternative under Section 376AB read with Section 511 IPC.

Heard.

Quite clearly, all what the victim and even her parents alleged in their statements, was that the petitioner touched the victim with a bad intention. As regards her statement under Section 164 Cr.P.C., the same is not a substantive evidence. At any rate, the issue; whether the petitioner can be accused of having committed a sexual assault, punishable under Section 8 or any aggravated penetrative act, punishable under Section 6 of the Act,

is debatable and can conclusively be determined only upon conclusion of trial. As submitted by the learned State counsel, the prosecution is yet to examine 4 more witnesses. Thus, and in the wake of the crisis the nation is faced with, owing to the prevalent pandemic (Covid-Omicron), there is hardly any likelihood of the trial being concluded in the immediate future. It is not disputed that petitioner is in custody since 8.3.2020 and therefore, a period of nearly 2 years has gone by.

Accordingly, the petition is allowed and the petitioner is ordered to be enlarged on bail, subject to his furnishing adequate bail bonds/surety bonds to the satisfaction of trial Court/Duty Magistrate, concerned.

However, it is made clear that the observations made hereinabove are provisional and germane qua this order alone, and shall not constitute any expression of opinion on the merits of the case.

(ARUN PALLI)
JUDGE

January 17, 2022
AK Sharma