

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(225)

CRM-M-36781-2022
Date of Decision: 25.08.2022

Deepak @ Deepak Kumar

--Petitioner

Versus

State of Haryana

--Respondent

CORAM:- HON'BLE MR. JUSTICE RAJESH BHARDWAJ.

Present:- Mr. S.S. Dinarpur, Advocate with
Mr. Shubham Verma, Advocate for the petitioner.

Mr. Kirpal Singh, A.A.G., Haryana.

RAJESH BHARDWAJ.J (Oral)

The present petition has been filed under Section 439 Cr.P.C seeking the benefit of regular bail to the petitioner in case FIR No.85 dated 3.2.2022 under sections 323, 341, 506, 201 IPC and section 12 of POCSO Act and section 67-B of Information Technology Act, registered at Police Station, Ladwa, district Kurukshetra.

As per factual matrix, the FIR in question was lodged by the father of the victim. The sum and substance of the allegations made in the FIR is that daughter of the complainant, who was 17 years of age was a national level shooting player. His daughter used to operate the mobile phone of her father so as to complete her online home work. Accused/petitioner Deepak obtained from somewhere the mobile number used by the victim and by posing as a girl started sending friendship messages to his daughter. Resultantly, accused/petitioner entered into friendship with his daughter posing himself as a girl and started asking her to send her photographs. His daughter got deceived by the plan made by

the accused/petitioner and he started harassing her and asked her to send him her obscene photographs. He also harassed her to establish physical relations with him. He also threatened to viral her obscene photographs on the social media. He kept repeating the harassment of his daughter and finally she disclosed the same to her father. A request was made to take legal action against the culprit.

On the complaint made by the complainant, present FIR was lodged and investigation commenced. The petitioner was arrested on 17.3.2022. He approached the learned Fast Track Court, Kurukshetra for grant of bail, however, after hearing the parties, the same was declined vide order dated 6.8.2022. Aggrieved by the same petitioner has approached this court for grant of bail.

Learned counsel for the petitioner vehemently contends that petitioner has been falsely implicated in the present case. He submits that from the reading of the allegations made in the FIR the complicity of the petitioner is not made out. Counsel submits that the allegations made by the complainant were not substantiated even during investigation. He submits that learned Trial Court has examined all the material witnesses i.e. the victim, her father and mother as PW-3, PW-4 and P-5 respectively. Counsel has placed on record depositions of these three witnesses, wherein they have not supported the case of the prosecution and hence on the request of learned P.P all the three witnesses were declared hostile. Counsel submits that the case of the prosecution is neither supported on ocular version nor on the basis of the evidence as nothing objectionable was recovered from the mobile phone of the petitioner. He submits that case of

the prosecution is left with no credible evidence and thus further incarceration of the petitioner is not warranted. Counsel submits that the maximum sentence prescribed for the offence under Section 12 of POCSO Act is up to 3 years, whereas petitioner is behind bars since 17.3.2022 and hence deserves to be enlarged on bail.

On the other hand, learned State counsel on instructions from SI Kamlesh submits that there are specific allegations against the petitioner. He submits that the mobile phone of the petitioner was recovered and the same has been sent to FSL for examination, however, report of the FSL is still awaited. State counsel candidly submits that all the material witnesses i.e. the victim, her father and mother have been examined by the learned Trial Court, however, they have not supported the case of the prosecution and thus were declared hostile. He submits that as per information provided to him petitioner has no criminal antecedents. He submits that out of the total 14 prosecution witnesses 5 have been examined.

I have heard learned counsel for the parties at length and have gone through the records carefully.

Admittedly, petitioner is behind bars since 17.3.2022. The material witnesses i.e. the victim, her father and mother have been examined by the learned Trial Court, however, they have not supported the case of the prosecution and thus were declared hostile. The maximum sentence prescribed for the offence under Section 12 of POCSO Act is up to 3 years. There is nothing on record to show that petitioner has criminal antecedents. Material witnesses including the victim have already been examined by the Trial Court and hence there is no possibility of the

petitioner influencing the material witnesses. The veracity of the allegations levelled against the petitioner would be assessed by the Trial Court only upon conclusion of the trial. This court would refrain itself from commenting on the merits of the case, as the allegations and counter allegations would be assessed only after evaluation of the complete evidence to be led by both the sides before the Trial Court. The trial would take sufficiently long time in its conclusion.

In the totality of facts and circumstances and without making any observation on merits, present petition is allowed. Petitioner be enlarged on bail on his furnishing bail/surety bonds subject to satisfaction of Trial Court/Duty Magistrate, concerned. Nothing stated herein shall be treated as an expression on the merits of the case.

(RAJESH BHARDWAJ)
JUDGE

25.08.2022

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Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No