

CRM-M-42330 of 2021

{1}

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

217

**CRM-M-42330 of 2021 (O&M)
Date of decision:24.03.2022**

Shravan Kumar

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Surender Saini Advocate
for the petitioner.

Ms. Mahima Yashpal DAG, Haryana
for the respondent State

SUVIR SEHGAL J.

Heard through video conferencing.

CRM No.7798 of 2022

Pursuant to order passed by this Court on 10.02.2022, the applicant-petitioner has filed the instant application for placing on record copies of deposition of the prosecutrix and the complainant as well as that of an uncle of the prosecutrix, who have been examined as PW2, PW3 and PW7, as Annexures P-4 to P-6 respectively.

Application is allowed.

Testimonies are taken on record as Annexures P-4 to P-6 respectively.

CRM-M-42330 of 2021

Vide the instant petition filed under Section 439 of the Code of Criminal Procedure, 1973, the petitioner seeks grant of regular bail in FIR

No.433 dated 18.07.2021 lodged for offences under Section 376AB, 506 of Indian Penal Code, 1860 and Section 6 of Protection of Children from Sexual Offences Act, 2012 (for short “the POCSO Act”) at Police Station Sonapat City (Annexure P-1)

As per the case of the prosecution, FIR (Annexure P-1) has been registered on the statement of mother of 04 years old child (hereinafter referred to as “the victim”) on the allegation that her husband was out for labour work. While cleaning the house, she heard the 04 years old victim weeping. She ran downstairs, realized that the cries were coming from the room of Shravan Kumar, present petitioner. She opened the door of his room and saw him putting his private part in the mouth of the victim. Hitting him with a stick, she released the victim from his clutches. He threatened to eliminate her.

Counsel for the petitioner has placed reliance upon the statement of the complainant (Annexure P-2) as well as that of the minor victim (Annexure P-3) recorded under Section 164 of the Code to submit that their statements are at variance from the allegation levelled in the FIR. He has also invited the attention of the Court to the testimonies (Annexures P-4 to P-6) to submit that the crucial witnesses have not supported the case of the prosecution. He submits that the petitioner, who is 45 years old middle aged man and is in custody since 19.07.2021, deserves to be released on bail.

Per contra, State counsel upon instructions from ESI Devender, has opposed the petition by making a reference to the MLR. He contends

that considering the age of the minor victim and the nature of allegations, the petition deserves to be dismissed. As per his instructions, 13 out of 18 prosecution witnesses have been examined and the prosecution evidence is likely to be concluded soon.

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

FIR (Annexure P-1) has been registered on 18.07.2021 at 9:35 p.m. The minor victim was examined by the doctor on duty at Civil Hospital, Haryana on the same night. In her statement before the doctor, the complainant has given the details of the incident, which have been mentioned in the MLR, and are duly thumb-marked by the complainant acknowledging their correctness. The narration recorded by the doctor on the MLR is relevant and is reproduced as under:-

“A/H/O sexual assault by her neighbour Sarvan at home around 6.00 p.m on 18.07.2021 as history given by her mother that just 5 min before her daughter came out of her room. She saw her neighbour Sarvan was trying to put his penis inside victim mouth. She stopped him. No other physical or sexual assault done by Sarvan as told clearly by her mother. No history given by victim as she is 5 years old.”

The minor victim in her testimony (Annexure P-2) before the Court did not respond to any of the questions put to her and the Presiding Officer declared that as the witness seems to be scared and is totally silent, therefore, she is not a competent witness. Though the complainant in her

testimony before the Court has not supported the accusation levelled by her in the FIR, but considering the nature of allegation, which stands supported from the narration given by her before the doctor and gravity of offence allegedly committed, this Court is of the view that the probability of her succumbing under pressure cannot be ruled out. The petitioner, who is a middle aged man is alleged to have indulged in offence which would fall within the definition of “aggravated penetrative sexual assault” and in case he is found to be guilty, he is likely to be sentenced to rigorous imprisonment for a minimum term of 10 years which may extend to imprisonment for life, besides fine under Section 6 of the POCSO Act. Still further, it may be noticed that the trial is at an advanced stage as most of the prosecution witnesses have already been examined.

Keeping in view the totality of the facts and circumstances noticed above, this Court is of the view that petitioner is not entitled to the grant of concession of bail.

Petition is dismissed.

Nothing said hereinabove shall be construed to be an expression of opinion on the merits of the case.

(SUVIR SEHGAL)
JUDGE

March 24, 2022
savita

Whether Speaking/Reasoned	Yes
Whether Reportable	Yes