

**230 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-43759-2022

Date of decision : 14.12.2022

Dheeraj @ Deeraj

.....Petitioner

versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. P.S. Chauhan, Advocate
for the petitioner.

Mr. Kirpal Singh Thakur, AAG, Haryana.

RAJESH BHARDWAJ, J. (Oral)

This is the second petition filed by the petitioner for grant of regular bail in case FIR No.322 dated 16.08.2021, under Section 6 of POCSO Act, 2012 (Sections 8 & 10 of POCSO Act & Section 506 of IPC added later on and during investigation Section 6 of POCSO Act was deleted), registered at Police Station City Rewari, District Rewari (Haryana).

As per the facts of the case, the complaint was lodged by the complainant who is father of the prosecutrix against petitioner-Dheeraj @ Deeraj. It was alleged that the complainant solemnized marriage on 11.07.2008 with Nisha. Thereafter they were blessed with three children and the eldest daughter/victim (name concealed) is 13 years of age. His wife established illicit relations with his cousin Dheeraj @ Deeraj (petitioner) and started residing with him. There were several proceedings initiated by them against each other. His wife along with his younger daughter is residing with Dheeraj @ Deeraj. On 02.08.2020, his elder daughter (victim), prosecutrix went to stay with her mother and after

about a month, she suddenly return back to him. On her

return, she used to remain silent and used to complaint about stomach-ache. On his asking, she disclosed that when she went to reside with her mother then Dheeraj @ Deeraj sexually assaulted her. On the same, compliant was lodged to take legal action against the culprit. On the basis of the complaint, formal FIR was lodged and investigation commenced. The investigating agencies recorded the statement of the prosecutrix under Section 164 Cr.P.C. Petitioner was arrested on 17.08.2021. He approached the Court of learned Additional Sessions Judge, Rewari praying for grant of bail, however, the same was declined by learned Additional Sessions Judge, Rewari. Thereafter, the petitioner approached this Court by way of filing the petition bearing CRM-M No.1864-2022 which was dismissed as withdrawn vide order dated 24.02.2022. Thereafter, the present petition was filed.

It has been vehemently contended by counsel for the petitioner that though the FIR was lodged for the offence under Section 6 of POCSO Act, however, during investigation, the same was deleted and presently, the petitioner is being prosecuted for the offence under Sections 8 and 10 of POCSO Act read with Section 506 IPC. He submits that from the reading of the allegations in the FIR, it is apparent that the complainant is inimical towards the petitioner. He has submitted that admittedly the wife of the complainant along with her daughter was living with the petitioner who is cousin of the complainant. He submits that on account of the same, the complainant with due deliberations implicated the petitioner in the present case. He submits that the alleged occurrence in the FIR is of 2nd August, 2020 whereas, the present FIR has been lodged on 16th August, 2021 i.e. after about a year. He submits that there

is no explanation regarding this delay. He submits that the ocular version of the prosecutrix is not even medically corroborated. He submits that the petitioner has no criminal antecedents as he is not involved in any other case except the present case. He submits that the petitioner is behind bars since 17th August, 2021. He submits that in the overall facts and circumstances of the case, the petitioner deserves to be granted regular bail.

Learned State counsel, on the other hand, has opposed the submissions made by counsel for the petitioner. He has submitted that the prosecutrix in this case is minor being 13 years of age. He also submits that the statement of the prosecutrix was recorded under Section 164 Cr.P.C. wherein she made specific allegations against the petitioner. He further submits that now the examination-in-chief of the prosecutrix has already been conducted wherein she supports the case of the prosecution and on the basis of the same, now the prosecution has filed application under Section 319 Cr.P.C. for summoning another accused to face trial. However, he has submitted that as per the instructions, petitioner is not involved in any other case.

Heard. Evidently, the petitioner is the cousin of the complainant. The alleged occurrence relates back to 2nd August, 2020 whereas the present FIR has been lodged on 16th August, 2021. There is nothing on record to show that the petitioner has no criminal antecedents.

The veracity of the allegations would be assessed only after the conclusion of the trial and on the appreciation of evidence led by both the parties before the trial Court. The trial of the case will take sufficiently long time. This Court would refrain itself from commenting

anything on the merits of the case. However, confining itself to the prayer made for bail, this Court finds that counsel for the petitioner succeeds in making out a case for grant of regular bail. It is evident that the petitioner is being prosecuted for the offence under Sections 8 and 10 of POCSO Act in which the maximum sentence is 7 years under Section 10 of POCSO Act. Accordingly, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail/surety bonds to the satisfaction of the concerned trial Court/Duty Magistrate. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

(**RAJESH BHARDWAJ**)
JUDGE

14.12.2022
m. sharma

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No