

223 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-55168-2022
Date of Decision: 02.12.2022

BALWINDER SINGH ... PETITIONER
VS.
STATE OF PUNJAB .. RESPONDENT

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present : Mr. Prateek Sodhi, Advocate
for the petitioner.

Mr. Amit Shukla, AAG, Punjab.

VIVEK PURI, J.(ORAL)

Petitioner is seeking regular bail in the case bearing FIR No.119 dated 11.07.2019 under Sections 363 and 366 IPC (Sections 342 and 376 (2) (i) IPC and Sections 6 and 17 of POCSO Act added later on) registered at Police Station Gharinda, District Amritsar

Custody certificate has been placed on record.

Briefly, the FIR has been registered on the basis of the statement of the mother of the victim alleging that the victim is aged about 13 years and during the night hours on 10.07.2019, she went missing from the house.

Learned counsel for the petitioner contends that the petitioner is in custody for a period of 03 years, 04 months and 21 days. The charge was framed as back as on 16.09.2019 and despite a substantial number of adjournments spreading over a period of more than three years, the victim has not been examined. So far only 05 out of 12 witnesses have been examined. Even mother of the victim during her cross-examination has stated that the victim had ran away from the house with some boy on 07.02.2021. The victim is not being produced in the trial Court despite the fact that the learned trial Court had sent the copies of the orders to the SHO, P.S. Gharinda and also to SSP, Amritsar (Rural) to ensure the presence of the victim. It has also been pointed out that during the course of her medical examination, the victim has not given any history of penetrative sexual assault.

Learned State counsel has opposed the bail application on the score that there are allegations with regard to commission of penetrative sexual assault upon the victim, who is aged about 13 years, in the statement under Section 164 Cr.P.C. It has not been disputed that the victim has not appeared in the trial Court despite substantial number of opportunities.

On a query with regard to the report of chemical examiner, learned State counsel, on instructions from ASI Kewal Singh, submits that there is no such report of chemical examiner in the record available with him.

It is significant to note that the petitioner is in custody for a period of 03 years, 04 months and 21 days and not involved in any other case. The victim has not given any history with regard to penetrative sexual assault during the course of her medical examination. The victim is not coming forth to depose in the trial Court despite substantial number of adjournments. It is also emerging in the statement of the mother of the victim that has been recorded during the course of trial, that the victim has eloped with some boy on 07.02.2021. The order passed by the learned trial Court on 28.10.2022 also indicates that the copies of the orders were sent to the Officer In-Charge, Police Station Gharinda and SSP, Amritsar (Rural) with an attempt to ensure and secure the presence of victim but to no effect. The petitioner cannot be incarcerated for a long period of time, particularly, only on the score that the victim is not putting appearance in the trial Court. The conclusion of trial in the peculiar circumstances may take some more time and keeping in view the period of incarceration already undergone by the petitioner and other circumstances appearing on record, sufficient grounds are made out to extend the concession of bail to the petitioner.

Accordingly, without making any observation on the merits of the case, the present petition is allowed and petitioner is ordered to be released on bail, subject to his furnishing bail/surety bonds to the satisfaction of concerned trial Court/Chief Judicial Magistrate/Duty Magistrate.

02.12.2022
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(VIVEK PURI)
JUDGE

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