

CRM-M-53503-2019

Date of decision: 01.04.2022

BINDER KAUR AND ANR.

...PETITIONERS

VERSUS

STATE OF PUNJAB

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present: Mr. Veneet Sharma, Advocate
for the petitioner.

Mr. A.A.Pathak, Addl. AG, Punjab.

Mr. Deepanshu Sodhi, Advocate for
Mr. Vivek Salathia, Advocate
for the complainant.

VIVEK PURI,J. (ORAL)

Present petition is under Section 438 Cr.P.C. for seeking anticipatory bail to the petitioners in case FIR No. 99 dated 22.06.2019, registered under Sections 363/366-A/120-B IPC, 1860 and Sections 376/109 IPC and Section 4 of the Prevention of Children from Sexual Offences (POCSO) Act, 2012 added later on at Police Station Kamboj, Amritsar Rural, District Amritsar.

On 16.12.2019, the following order was passed:-

“Notice of motion for 20.03.2020.

At this stage, Mr. Vivek Salathia, Advocate has today put in appearance on behalf of the complainant and has filed power of attorney, which is taken on record.

Meanwhile, in the event of arrest, the petitioners be released on interim bail subject to their furnishing personal bonds and surety bonds to the satisfaction of Arresting/Investigating Officer. However, the petitioners shall join the investigation as and when called upon to do so and cooperate with the Investigating Officer and shall also abide by the conditions as provided under Section 438(2) Cr.P.C.”

Learned counsel for the petitioners contend that they are the parents of Gurkanwal Singh who is juvenile in conflict with law and facing trial before the Children Court. At the first instance, the case was registered with regard to the offence under Sections 363/366-A/120-B IPC and the petitioners were granted pre-arrest bail by the Court of learned Additional Sessions Judge, Amritsar in terms of order dated 29.07.2019. Subsequently, the offence under Sections 376/109 IPC and Section 4 of POCSO Act was added and the subsequent application for pre-arrest bail was dismissed by the Court below. It has been further stated that the statement of the victim under Section 164 Cr.P.C was recorded on 23.06.2019 wherein there is not a whisper of any allegation with regard to penetrative sexual assault having been committed upon her. Furthermore, in pursuance of the interim directions, the petitioners have joined the investigation, the investigation of the case is complete, challan has been presented and even, the statements of two witnesses have been recorded.

On instructions from ASI Surjit Singh, learned State counsel has not assailed the aforesaid factual aspects but argued that at the time of medical examination of the victim, she had spelt out the allegation with regard to penetrative sexual assault while giving history of the incident.

Be that as it may, the allegations of penetrative sexual assault have been levelled against the son of the petitioners who is facing trial before the Children Court. No such allegation has been levelled in the statement under Section 164 Cr.P.C and as such, the allegations with regard to the commission of offence under Section 376 IPC and 4 of POCSO Act will remain a debatable and moot point before the trial Court. In such circumstances, the bar as raised under Section 438(4) Cr.P.C can be relaxed and sufficient exceptional circumstances are made out to extend the concession of pre-arrest bail to the petitioner.

16.12.2019, granting interim bail to the petitioners is made absolute.

However, the petitioners shall abide by the conditions stipulated under Section 438(2) Cr.P.C.

The petition stands disposed of.

01.04.2022
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(VIVEK PURI)
JUDGE

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