

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

CRM-M-16934 of 2023

Date of Decision: April 18, 2023

Narinder Awasthi @ Rohit **...Petitioner**
Versus
State of U.T., Chandigarh **...Respondent**

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA**Present:-** Mr. Pranav Chamoli, Advocate for the petitioner.

Mr. A.M. Punchhi, PP, for UT, Chandigarh.

DEEPAK GUPTA, J.

Prayer in this petition filed under Section 439 Cr.P.C is for grant of regular bail in case FIR No.107 dated 22.11.2021 registered at Police Station Sarangpur, District Chandigarh under Sections 342, 363, 365, 377 IPC and under Sections 4, 8, 12 of POCSO Act, 2012 though charge is stated to have been framed under Sections 342, 363, 365, 377 IPC and Sections 6 and 10 of POCSO Act.

2. Petitioner in this case is stated to be in custody ever-since 22.11.2021. FIR was lodged on the statement of Anita as per which her minor son aged 09 years (hereinafter referred as victim) had gone to attend the marriage function on 21.11.2021 at about 08:00 PM with his friends but did not return. Complainant with her husband searched for her son in the locality but in vain. They abandoned the search as her husband stated that the victim might have slept with some friends. When the victim did not return in the morning, fresh search was made. On reaching near House No.557/1, Milk Colony, Dhanas, a man was seen coming from the house from where cries of victim could be heard.

Complainant with other entered the house, took their son in their custody and overpowered the man. The victim disclosed as to how he had been forcibly brought by the accused- petitioner to his house at night and who kept him tied and that he was subjected to unnatural intercourse by inserting his fingers into his private body parts. Petitioner disclosed his name. The victim as well as petitioner were taken to the Police Station. FIR was registered. After necessary investigation, challan was filed. Charges have already been framed. It is informed by learned counsel for the UT, Chandigarh that out of 20 witnesses cited by the prosecution, 13 have already been examined, six have been given up and only one witness is left to be examined and thus, trial is at the fag end.

3. It is contended by learned counsel for the petitioner that entire case put forth by the prosecution is a tainted version based on fabricated story. Learned counsel pointed out towards the statement of complainant Anita who was examined during trial as PW7. Learned counsel contends that there are major contradictions in the statement of complainant made before the Police and as made during trial inasmuch as she stated to have noted the presence of the petitioner in the CCTV footage of the marriage function and that the petitioner was standing behind the victim but as per the statement of the Investigating Officer made during trial, complainant did not tell him anything about any CCTV footage. It is urged that CCTV footage having not been brought on record, the best piece of evidence, has been withheld. Besides, in the FIR version, complainant is stated to have asserted that during search in the morning, she heard the cries of her son and managed to enter the house

and overpowered the petitioner and secured the custody of the victim and then victim and the petitioner were taken to the Police Station. However, contrary to the same, it is disclosed during trial by the complainant that a lady residing in the vicinity pointed out towards the house of the petitioner, who had heard the cries of a child and upon that disclosure, she proceeded to knock the door of the house but the petitioner closed the same and then Police was called which managed to enter the house, beaten the petitioner and the the victim was found drowsy. Apart from these contradictions, it is also pointed out that as per PW7, FIR was lodged upon insistence of the accompanying neighbours. Learned counsel further submits that though victim examined as PW1 asserted sexual assault on his person but as per the MLR dated 22.11.2021, the feature suggestive of forceful anal penetration is opined but as per the detailed diagnosis, anal tone was stated to be normal with no external or internal bleeding and so the use of the expression “suggestive” assumes paramount importance. Besides, victim was not complaining of pain nor any fresh external injury was visible on his person. Attention is further drawn towards CFSL report as per which human semen could not be detected on the exhibits of the victim relating to the external and internal rectal swabs and his oral swab. Besides, no genetic material contribution of the petitioner was found on the rectal and oral swabs of the victim. With all these submission, prayer is made for releasing the petitioner on bail, who is in custody for the last approximately one year and six months.

4. Strongly opposing the bail petition, learned counsel for UT,

Chandigarh, not only pointed out towards the gravity of the offence but the fact that out of 20 witnesses cited by the prosecution, only one is left to be examined and, thus, trial is at the fag-end. Attention is further drawn towards the statement of the victim (PW1) and that of the complainant (PW7) made during trial, who have substantially supported the prosecution version. It is contended that minor contradictions appearing in the statement of the complainant and that of the victim cannot give any advantage to the petitioner. With these submissions, prayer is made for rejecting the bail petition.

5. I have considered the submissions of both the sides and perused the paper book carefully.

6. Suffice is to say at this stage that victim as well as his mother- complainant have supported the prosecution version during trial in substantial part. It will not be appropriate for this Court at this stage to comment anything regarding the contradictions pointed out by counsel for the petitioner, lest the trial Court is prejudiced in any manner.

7. As argued by learned counsel for UT, Chandigarh, minor contradictions should not be given any weight. Besides, trial is at the fag end as only one witness is left to be examined. Gravity of the offence cannot be ignored as a child of just 09 years of the age is a victim of sexual assault. Petitioner was caught at the spot. In what circumstances, he was nabbed i.e. he was nabbed with the help of the Police or was nabbed by the complainant, is a matter of trial.

8. Having noticed the aforesaid facts and circumstances, but without commenting anything further on the merits of the case, I am of

the view that petitioner does not deserve to be granted the benefit of bail.

9. Dismissed.
10. To remove any doubt, it is made clear that trial Court will not be influenced by any opinion expressed by this Court in this order.

April 18, 2023
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(DEEPAK GUPTA)
JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable: Yes/No