

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**CRM-M-22480-2021 (O&M)****Date of decision: 17.07.2023****Ashok Kumar****...Petitioner(s)****Vs.****State of Haryana & Another****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA****Present:-** Mr. Deepam Raghav, Advocate
for the petitioner.

Mr. Arjun Lakhanpal, AAG Haryana.

Mr. S.S. Khurana, Advocate
for respondent No.2.

NIDHI GUPTA, J.

Prayer in the present petition is for cancellation of regular bail granted to respondent No.2 herein by the learned Additional Sessions Judge, Rewari vide order dated 27.05.2021 (Annexure P1) in FIR No.67 dated 10.03.2021 under Sections 306, 341, 34 IPC and Sections 8, 12 and 15 POCSO Act registered at Police Station Dharuheda, Rewari. Petitioner is the complainant/father of the deceased minor girl who allegedly committed suicide due to the blackmailing of respondent No.2 herein, and co-accused/Nitin.

2. Facts, as contained in the FIR are as follows:-

“To, The SHO, P.S. Dharuheda, Rewari. It is requested that I Ashok Kumar S/o Sh. Heeralal is a permanent resident of Khejuri, District Rewari, P.S. Dharuheda. I have two children. My daughter namely Kismat aged 17 years is

studying in 12th standard in Government Secondary School, Hasanka, Rewari. On 09.03.2021, at about 1:30 pm, my daughter returned back home from school. Nobody was at home at that time. She ate some poisonous substance at home. On hearing her shouting my neighbours came there and took my daughter to Pushpanjali Hospital, Rewari. At about 2:00 am, my daughter died. Next day, I along with some villagers went to Government Secondary School, Hasanka and enquired at our own level. The Principal and staff of the school told that Nitin s/o Anil Kumar R/o Village Hasanka and Vikas s/o Pooran Singh R/o Village Baliyar Kala, who are also students of 12th standard have made some video of my daughter Kismat and were also messaging her. Both of them were blackmailing my daughter through the video and messaging due to which my daughter ate some poisonous substance and died and Nitin and Vikas are responsible for it. Strict legal action should be taken against them. I will be very thankful to you....”

3. On the basis of the above complaint, FIR under Sections 306 and 34 IPC was registered against Nitin and respondent No.2. Admittedly, co-accused Nitin has been granted regular bail. Vide impugned order dated 27.05.2021 (Annexure P1), respondent No.2 was granted regular bail by learned Additional Sessions Judge, Rewari. Hence, present petition seeking cancellation of bail to respondent No.2 – accused.

4. Learned counsel further submits that the respondent No.2 had filmed co-accused Nitin kissing the deceased and had intercepted her on her way back home and had threatened her that he

would viral the clip if she did not accede to his demand for sexual favours.

It is submitted that this fact has been admitted by respondent No.2 in his disclosure statement (Annexure P3). It is submitted that the mobile phone of respondent No.2 which was used to make the objectionable video has also been recovered from him vide recovery memo dated 11.03.2021. It is submitted that however, all this evidence has been ignored by the learned Court below while granting bail to respondent No.2.

5. It is inter alia submitted by learned counsel for the petitioner that the victim was 17 years old at the time of incident (date of birth of the deceased is 22.08.2004 as mentioned in her Aadhaar card Annexure P5). It is submitted that respondent No. 2 is the main perpetrator in the present case as he was the one who had made the objectionable video of the deceased, and he was threatening the deceased that he will share the said video if she did not enter into sexual relations with him. Learned counsel submits that it is for this reason that the deceased had committed suicide by consuming poison and therefore, offence under Section 306 IPC was clearly made out. It is further submitted that this fact has been noticed in the impugned order as well, and the learned ASJ has recorded that the respondent No.2 herein is the main accused who had made the objectionable video of the deceased with Nitin. Learned counsel contends that therefore, the learned trial Court was in patent error in granting bail to the respondent No.2. It is further submitted that while granting bail, learned trial Court has failed to consider that the FIR also contained Sections 8, 12 and 15 of POCSO Act.

6. Per contra, it is contented by learned counsel for respondent No.2 that as per statement (Annexure P4) of Ms. Monika, Principal, Government Senior Secondary School, Hasanka under Section 161 Cr.P.C., she has stated that the deceased was a student of 12th standard and “...On 09.03.2021, I was present in the school and I came to know that Nitin s/o Anil Kumar r/o Village Hasanka and Vikas s/o Pooran Singh R/o Village Baliyar Kalan, students of 12th class were fighting with each other. I called both of them in my office and on enquiring it has been found that Kismat d/o Ashok Kumar R/o Khejuri, a student of 12th standard was kissed by Nitin and Vikas had recorded it. They had fought due to this reason. I had also called Kismat in my office and advised her properly. Thereafter, parents of Kismat, Nitin and Vikas were also called in the school. The parents of Kismat did not come to school...”. Learned counsel submits that clearly, therefore, the main accused in the present case is Nitin who had kissed the deceased. It is submitted that it has also come on record that it was at the asking of Nitin that respondent No. 2 had made the video. Ld. counsel submits that admittedly, Nitin is already out on bail, however, the petitioner by way of present petition is seeking cancellation of bail granted to respondent No.2 only, and not also of the main accused.

7. Learned counsel further submits that the arguments now advanced by the petitioner are at variance from the case put forth by him before the learned trial Court, or even as that contained in the FIR. Learned counsel points out that in the FIR petitioner/complainant has

clearly stated that both Nitin and co-accused Vikas/respondent No.2, had sought to defame the deceased and had picturised her and were blackmailing her. Even before the learned trial Court, it was argued on behalf of the petitioner that it was a conspiracy of accused Nitin and co-accused Vikas to blackmail and defame the deceased. However, contradictorily, it was now being stated by the petitioner that respondent No.2 was the main accused. It is submitted that the said argument on behalf of the petitioner is fundamentally fallacious as admittedly, deceased was kissed by co-accused Nitin, and video was also made by respondent No.2 on the asking of Nitin. Yet, there is no challenge to bail granted to co-accused Nitin. Learned counsel contends that in view of the above facts, respondent No.2 is entitled to parity with co-accused.

8. Learned counsel further submits that respondent No.2 has not misused, let alone abused the terms and conditions of the bail. It is also submitted that cancellation of bail is different from grant of bail. It is submitted that challan was presented on 17.05.2021 and charges were framed on 26.07.2021 and evidence commenced on 23.08.2021. It is submitted that thus far, out of 31 prosecution witnesses only 6 prosecution witnesses have been examined. Learned counsel submits that respondent No.2 had been granted bail on 27.04.2021 and since the past more than two years, he has not misused the concession of bail and is not obstructing the cause of justice. Learned counsel further submits that respondent No.2 is studying and is just a young boy of 19 years and no useful purpose will be served by putting him behind bars.

9. Learned counsel also submits that there is no suicide note and even the DITAC report (Annexure R-3) does not contain anything against respondent No.2. Learned counsel prays that bail granted to respondent No.2 be not cancelled.

10. Learned State Counsel submits that relationship of the deceased with Nitin was consensual and the main accused in the present case is respondent No.2 herein who had made the video and had threatened to defame the deceased/victim by sharing the video which led her to commit suicide.

11. I have heard learned counsel for the parties, and considered the respective submissions made on their behalf.

12. Keeping in view the totality of the facts and submissions noted hereinabove, and the fact that the trial will take some time to conclude as only six out of 31 prosecution witnesses have been examined; and the fact that admittedly, respondent No.2 is a young student having no criminal antecedents, and has not misused the concession of bail, I find no ground is made out to interfere with the impugned order.

13. Present petition accordingly, stands **dismissed**.

14. Pending application(s) if any also stand(s) disposed of.

17.07.2023

Sunena

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No

(Nidhi Gupta)
Judge