

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

209

Criminal Misc. No. M-28489 of 2023

Date of decision :-16.10.2023

Chitranjan

.....Petitioner

Versus

Union Territory, Chandigarh

.....Respondent

CORAM:- HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Sumit Bajaj, Advocate
for the petitioner.

Mr. Anupam Bansal, Addl. P.P., UT Chandigarh.

NIDHI GUPTA J. (Oral)

Prayer in this petition filed under Section 439 Cr.P.C. is for grant of regular bail to the petitioner during pendency of the trial in case FIR No.07 dated 22.1.2023, under Sections 366 and 376(2)(n) IPC and Section 6 of POCSO Act, registered at Police Station Industrial Area, Chandigarh.

The FIR (Annexure P-1) was registered on the complaint of mother of the victim. The contents of the FIR reads as under :-

“Statement of Malti w/o Santosh Pal, r/o Jhhuggi No.202, Sanjay Labour Colony Phase-1, Industrial Area, Chandigarh age 45 years, stated that I live at above-mentioned address along with my family, I am a house-wife & I have 6 children

(3 girls & 3 boys). My two eldest children are boys and third child is a girl whose name is Khushboo, age 16 years. She left home at about 2 PM without telling anyone. Me & my husband were looking for her and while searching when we reached at a jungle near railway station, we found our daughter Khushboo. On my asking she told me that Chitranjan Kumar s/o Sh. Binde Kumar, who lives in our colony, were establishing physical relations with me since past 3 months on the pretext of marrying me. He also tried to make physical relations with me today but ran away after seeing you. Me (Malti) and my husband and along with my daughter (Khushboo) started searching for Chitranjan, who was found at a small distance, in the jungle near railway station. Me and my husband took both of them to the police station. Stated that legal action must be taken against Chitranjan s/o Binde Kumar”

Learned counsel for the petitioner *inter alia* submits that at the time of occurrence, the victim was 16 years of age. Learned counsel states that the victim, in her statement recorded under Section 164 Cr.P.C. as also in her deposition as PW6, has not supported the prosecution case and has turned hostile. In this regard learned counsel for the petitioner refers to Annexure R-1/the deposition of the victim as PW6, wherein she has clearly stated that *“I am acquainted with accused since my childhood as he resides in my neighbourhood. I used to roam around with accused and once my family member noticed the same and got the present case registered against him. I had consensual sexual relations with the accused in January, 2023. I*

and accused developed consensual sexual relations only once. My parents have got the criminal case registered against accused”.

Learned counsel for the petitioner further refers to the judgment rendered by the Madras High Court in case titled **Manimaran Versus The Station House Officer and Another, Law Finder Doc. I.D.-2049298**, wherein in para 6, the Court has observed as under :-

“6. In this regard it is relevant to refer the judgment of the learned Single Judge of this Court, in Sabari v. Inspector of Police reported in 2019 (3) MLJ CrI 110, wherein the learned single Judge had discussed in detail about the cases in which persons of the age group of 16 to 18 years are involved in love affairs and how in some cases ultimately end up in a criminal case booked for an offence under the POSCO Act. The relevant portions of the judgment are extracted here under for proper appreciation:

"21. When this case was taken up for hearing, this Court became concerned about the growing incidence of offences under the POCSO Act on one side and also the Rigorous Imprisonment envisaged in the Act. Sometimes it happens that such offences are slapped against teenagers, who fall victim of the application of the POCSO Act at a young age without understanding the implication of the severity of the enactment.

26. xxx xxx xxx

27. Apart from the above, this Court is of the view that as per the 3rd respondent's report, majority of cases are due to relationship between adolescent boys and girls. Though under Section 2(d) of the Act, 'Child' is defined as a person below the age

of 18 years and in case of any love affair between a girl and a boy, where the girl happened to be 16 or 17 years old, either in the school final or entering the college, the relationship invariably assumes the penal character by subjecting the boy to the rigorous of POCSO Act. Once the age of the girl is established in such relationship as below 18 years, the boy involved in the relationship is sure to be sentenced 7 years or 10 years as minimum imprisonment, as the case may be.

28. xxx xxx xxx

29. *Therefore, on a profound consideration of the ground realities, the definition of 'Child' under Section 2(d) of the POCSO Act can be redefined as 16 instead of 18. Any consensual sex after the age of 16 or bodily contact or allied acts can be excluded from the rigorous provisions of the POCSO Act and such sexual assault, if it is so defined can be tried under more liberal provision, which can be introduced in the Act itself and in order to distinguish the cases of teen age relationship after 16 years, from the cases of sexual assault on children below 16 years. The Act can be amended to the effect that the age of the offender ought not to be more than five years or so than the consensual victim girl of 16 years or more. So that the impressionable age of the victim girl cannot be taken advantage of by a person who is much older and crossed the age of presumable infatuation or innocence".*

Per contra, Learned State counsel refers to the custody certificate dated 26.9.2023 (Annexure R-2), as per which the petitioner has been in custody as undertrial for a period of 08 months and 04 days till that date. Learned State counsel however admits that the victim in her deposition (Annexure R-1) as PW6 before the

learned trial Court, did not support the prosecution case and had turned hostile. Learned State counsel submits that out of total 14 prosecution witnesses, six have been examined, three have been given up and five witnesses are yet to be examined and the next date fixed before the learned trial Court for recording of remaining prosecution evidence is 10.11.2023.

I have heard learned counsel for the parties and gone through the case file carefully.

Without commenting on the merits of the case, however, keeping in view the totality of facts and circumstances of the case, including the fact that the trial of the case is likely to consume considerable time as out of 14 prosecution witnesses, five are yet to be examined; and that the material witnesses including the victim already stand examined; and keeping in view the custodial period of the petitioner; and the fact that perusal of custody certificate shows that there is no other case pending against him, further custody of the petitioner may not be justified. Therefore, without meaning any expression of opinion on the merits of the case, it is ordered that the petitioner-Chitranjan s/o Binde Kumar be released on regular bail subject to his furnishing requisite bail bonds/surety bonds to the satisfaction of the trial Court/Duty Magistrate, concerned.

The petition is allowed.

October 16, 2023

Vijay Asija

(NIDHI GUPTA)
JUDGE

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