

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M-29781-2023 (O&M)

Date of order: 04.07.2023

Lucky Kumar

.....Petitioner(s)

Vs.

State of Punjab

.....Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Dilpreet Singh Gandhi, Advocate
for the petitioner.

Mr. Pankaj Khollar, AAG Punjab.

Nidhi Gupta, J.

Present is the first petition filed by the petitioner under Section 439 of Code of Criminal Procedure seeking grant of regular bail in case FIR No.83 dated 26.03.2023 registered under Sections 354-A and 506 of Indian Penal Code, 1860 and Sections 10 and 21 of POCSO Act, at Police Station Sadar, District Amritsar (Annexure P1).

2. FIR is reproduced hereinbelow:-

“Statement of Sunaina d/o Deepak Kumar R/o Gali No.3, House No.46, Jagdambey Colony, Majitha Road, Amritsar, aged about 11 years, Mobile No.99883-32673 stated that I am resident of above address and I am studying in 6th class at Bright Land Public School, Majitha Road. My date of birth is 25.01.2012. My father is selling fruits at Haridwar and used to come home after a gap of about 2-3 months. After my father, my mother Jagrati got friendship with one Lucky Kumar s/o Jaspal Singh R/o Satguru Ramdas Colony, Mohini Park, Amritsar and Lucky Kumar usually visited our house. In the

absence of my mother, Lucky Kumar tried to tease me. On 05.01.2023, Lucky Kumar came to our house during noon-time and sent my mother to Bazar for bringing Maggi and then he hugged me and touched my breast on which I got afraid and started weeping. Then Lucky Kumar told me that in case I tell this thing to anybody, then he will kill me and due to fear I did not talk to anybody. Then on 20.02.2023, Lucky Kumar again came to our house during noon and sent my mother to bazaar on the pretext of bringing paneer and in her absence he forcibly kissed on my mouth. In this connection, I told my mother on her return but she in connivance with Lucky Kumar started threatening me that in case you tell this matter to anybody, then we will kill you as well as your father Deepak Kumar. Due to this fear, I did not tell this to anybody. After completing my examination, we went to my father at Haridwar and on 05.03.2022, we came back home. After reaching home, we saw that my mother was not present at home and after enquiring in the surrounding area, we came to know that my mother left with her friend Lucky Kumar. Then I told this to my father that this Lucky Kumar used to tease me but due to fear of insult, we did not talk to anybody in the neighbourhood. Today, I came with my father Deepak Kumar and told the truth to you. Kindly take legal action against Lucky Kumar. Sd/- Sunaina, Sd/- Deepak Kumar, certified by Sd/- Amandeep Kaur SI Police Station Sadar, District Amritsar dated 26.03.2023.”

3. It is inter alia submitted by learned counsel for the petitioner that from a bare perusal of the allegations made in the FIR, it is clear that the petitioner has been falsely implicated in a criminal case at the behest of the father of the prosecutrix. It is submitted that the reason for this is that mother of the complainant Smt. Jagreeti, is having friendly relation with the petitioner. It is submitted that the petitioner had helped

the mother of the prosecutrix/wife of the complainant namely Jagrati in filing a protection petition before this Court, same being CRWP-2447-2023 titled as 'Jagreeti Vs. State of Punjab & Others' (Annexure P2), seeking protection from her husband/complainant in the present FIR; which was allowed by this Court vide order dated 15.03.2023 (Annexure P3). It is submitted that it is for this reason that the petitioner is trapped in the present FIR; and was arrested on 29.03.2023 and has been in custody since then.

4. It is further submitted that the prosecutrix had registered the present FIR against the petitioner and her mother but has thereafter given statement that her mother i.e. the co-accused was not involved in the act and has prayed to release her from the custody. As a result, co-accused Jagriti has been granted regular bail by this Court vide order dated 19.05.2023 (Annexure P4), however, the petitioner continues to languish in custody. It is submitted that from the above facts, it is clear that the present complaint was tutored and was filed at the instigation of father of the prosecutrix. It is submitted that the petitioner has been in custody since 29.03.2023. It is submitted that the petitioner had merely stood by the co-accused Jagriti/mother of the complainant against the atrocities committed by her father/the complainant and other relatives and had also helped her to take protection from this Court and it is for this reason that the petitioner is falsely implicated in the present FIR even though there is no evidence against the petitioner.

5. On advance notice, Mr. Pankaj Khollar, AAG Punjab appears on behalf of respondent-State and while opposing the prayer made

by the counsel opposite, files custody certificate in Court which is taken on record.

6. The submissions made hereinabove on behalf of both the parties have been considered. Admittedly, investigation in the case is over and nothing is to be recovered from the petitioner. Perusal of the custody certificate shows that the petitioner has undergone 3 months 5 days (total 95 days) in custody as under-trial. Trial of the case will take time to conclude and no useful purpose will be served by confining the petitioner to custody. Admittedly, the petitioner has no criminal antecedents.

7. Accordingly, present petition is **allowed** and petitioner is directed to be released on regular bail on his furnishing bail and surety bonds to the satisfaction of the concerned trial Court/Duty Magistrate.

8. However, it is made clear that nothing stated above shall be construed as an expression of opinion on the merits of the case.

04.07.2023
Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No