

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

210

CRM-M No.33378 of 2023 (O&M)
Date of Decision: 09.11.2023

Radhey Sham

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Chandan Singh Rana, Advocate,
for the petitioner.

Mr. Arjun Lakhanpal, Addl. AG, Haryana.

MANISHA BATRA, J.

1. The instant petition for grant of regular bail has been filed under Section 439 of Cr.P.C. by the petitioner seeking regular bail in case bearing FIR No.153 dated 23.04.2023 registered under Section 10 of Protection of Children from Sexual Offences Act, 2012 (For short “POCSO Act”) at Police Station Pehowa, District Kurukshetra.

2. The brief facts of the case relevant for the purpose of disposal of the instant petition are that the aforementioned FIR was registered on the basis of a written complaint filed by “S” father of the prosecutrix (name withheld) alleging that the prosecutrix who was her nine year old daughter was studying in Government School of his village. On 23.04.2023, she had gone to the school to play. The accused who is Chowkidar in the school of her daughter sexually harassed her. She had somehow saved herself from the clutches of the accused and had disclosed about the entire incident to him. He prayed for taking action against the culprit. After registration of FIR, investigation proceedings were initiated. The petitioner was arrested on 23.04.2023. Statement of

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the victim under Section 164 of Cr.P.C. was recorded. After completion of necessary investigation, challan was presented in the Court for trial of the petitioner and presently, he is facing trial for commission of aforementioned offences before the Fast Track Court specially designated for trying offences under the provisions of POCSO Act. He had moved an application for regular bail before the learned trial Court which was dismissed vide order dated 30.05.2023.

3. The present petition has been filed by the petitioner on the grounds and it has been argued by his counsel that he has been falsely implicated in this case. The allegations on the face of it do not make out any case for even framing charge under the aforementioned offences against him. The trial is likely to take time. There is no independent evidence to the alleged occurrence. The testimony of the victim, her father and mother had been recorded before the trial Court and her father and mother had not supported the prosecution case whereas the victim also gave self-contradictory statement. Therefore, it is urged that the petition deserves to be allowed.

4. The petition has been resisted by the State in terms of the status report filed by way of an affidavit wherein it is submitted that there are specific and serious allegations against the petitioner and, therefore, he does not deserve to be given concession of bail.

5. I have heard learned counsel for the petitioner and learned State counsel and have perused the record.

6. The petitioner is alleged to have committed the act of aggravated sexual assault with the victim as on 23.04.2023. However, on a perusal of her sworn deposition as recorded before the learned trial Court, it

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is revealed that though in her examination-in-chief, she had stated that the present petitioner had tried to kiss her but she had managed to rescue herself but during cross-examination, she stated that the petitioner did not sexually assault her. The testimony of the prosecutrix which is self-contradictory cannot be considered to be reliable one. Her father and mother who appeared as PW-3 and PW-4 respectively are shown to have not supported the prosecution version at all. Rather they are shown to have turned hostile. As such, no incriminating material has come on record as against the petitioner by examination of the victim and other material witnesses. The petitioner is 65 years old. He is in custody w.e.f. 23.04.2023. The trial is likely to take time. No useful purpose is going to be served by keeping him in custody. It is well settled proposition of law that bail is the rule and jail is an exception. Therefore, keeping in view the nature of the subject offence, the time spent by the petitioner in custody, the fact that the trial is likely to take time and the attendant facts and circumstances of the case, I am of the considered opinion that the petition deserves to be allowed. Hence, the same is allowed and the petitioner is ordered to be admitted to bail subject to his furnishing personal as well as surety bonds to the satisfaction of learned trial Court/CJM/Duty Magistrate concerned.

7. Miscellaneous application(s), if any, also stand disposed of.

09.11.2023

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**(MANISHA BATRA)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No