

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

220

CRR-1725-2022 (O&M)

Date of Decision: 11.05.2023

Suraj

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Vishal Gupta, Advocate for the petitioner

Ms. Guramrit Kaur, DAG, Punjab

JAGMOHAN BANSAL, J. (ORAL)

1. The petitioner, through instant petition is seeking setting aside of order dated 26.07.2022 whereby Sessions Judge, Rupnagar has dismissed appeal of the petitioner and upheld order dated 07.07.2022 whereby Principal Magistrate, Juvenile Justice Board, Rupnagar has dismissed bail application of the petitioner.

2. The brief facts of the case are that FIR No.84 dated 22.05.2022 has been registered against the petitioner alleging commission of offences punishable under Sections 376 of Indian Penal Code, 1860 (for short 'IPC') read with Section 6 of Protection of Children from Sexual Offences Act, 2012 (for short '**POCSO Act**'). The victim at the time of commission of alleged offence was 4 years old and petitioner was 14 years old.

3. Learned counsel for the petitioner, *inter alia* contends that petitioner at the time of commission of alleged offence was less than 16

years old, thus, he can be tried as a juvenile and maximum sentence prescribed is 3 years. The petitioner is in custody since 22.05.2022 and he is not involved in any other crime. The petitioner is a student of 9th class and at the time of commission of alleged offence, he was studying in Government Senior Secondary School (Boys), Rupnagar. Bail is a rule in case of juvenile. There is no possibility that petitioner after release would join company of criminals. The incarceration is affecting career of the child.

4. Custody certificate dated 11.05.2023 is taken on record. As per custody certificate, the petitioner is in custody since 22.05.2022 and he is not involved in any other offence.

5. Learned State counsel does not dispute the afore-said factual position, however, submits that petitioner has committed heinous crime. There are 21 witnesses and till date 4 have been examined and 4 have been given up.

6. In the case in hand, the petitioner at the time of commission of alleged offence was 14 years old and at present he is tried as juvenile by Principal Magistrate, Juvenile Justice Board, Rupnagar. He can be awarded maximum sentence of 3 years. The petitioner has already suffered incarceration of 11 months and 19 days. There is nothing on record indicating that there is possibility of joining of company of criminals on the part of petitioner. There are 21 prosecution witnesses and till date 8 have been examined, thus, there is abysmally low

possibility of conclusion of trial in near future. The nature of offence is serious, however, considering the fact that petitioner has already undergone almost one year and maximum sentence may be 3 years, this Court is of the considered opinion that present petition deserves to be allowed and accordingly allowed. Order dated 26.07.2022 passed by Sessions Judge, Rupnagar and order dated 07.07.2022 passed by Principal Magistrate, Juvenile Justice Board, Rupnagar are hereby set aside. The petitioner is ordered to be released on bail subject to conditions as may be imposed by Trial Court/Illaq/Duty Magistrate concerned.

7. Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and Trial Court shall proceed without being prejudiced by observations of this Court.

(JAGMOHAN BANSAL)
JUDGE

11.05.2023

Mohit Kumar

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*