

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(204)

CRM-M-39757-2022
Date of decision: 18.01.2023

Mohan Kumar

...Petitioner

Versus

State of Haryana

...Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Munish Behl, Advocate for the petitioner.

Mr. R.K.S. Brar, Additional Advocate General, Haryana.

SUVIR SEHGAL, J. (Oral)

Custody certificate dated 17.01.2023 has been filed, which is taken on record.

This is the second petition filed by the petitioner under Section 439 of the Code of Criminal Procedure, 1973 (for short “Code”) seeking grant of regular bail in case FIR No. 65 dated 04.06.2021 (Annexure P-1) registered at Police Station Women, Faridabad under Section 8 of the Protection of Children from Sexual Offences Act, 2012 (for brevity “POCSO Act”) wherein subsequently Section 10 of POCSO Act was added.

Case of the prosecution is that FIR, Annexure P-1 has been registered on the statement of mother of 11 years old girl (hereinafter referred to as “Prosecutrix”) stating that on 03.06.2021, the prosecutrix informed her mother that Mohan Kumar, present petitioner, called her to his sister-in-law's house on 06.04.2021, when she was not at home. He took off her clothes,

clicked her photographs and forcibly kissed her on her cheek. Request has been made to take action against Mohan Kumar.

Counsel for the petitioner has contended that the story of the prosecution does not inspire any confidence and the petitioner has been falsely implicated. He submits that there is an un-explained delay of two months and the petitioner has been named as an accused as he had a verbal argument with the complainant over some petty issues. He submits that the petitioner who is in custody since the date of registration of the FIR deserves to be released on bail.

On the other hand, learned State counsel has opposed the petition on the ground that the petitioner is accused of harassing a young girl and has indulged in obscenity. He submits that the prosecutrix has supported the case of the prosecution in her deposition.

I have heard counsel for the parties and considered their submissions.

Petitioner is a accused of a heinous offence. He took advantage of a young and innocent girl and has sexually harassed her to the extent that she did not have the courage to confide in her mother for two months. Prosecutrix has been consistent in her stand and has supported the allegations in her statement under Section 161 Cr. P.C. as well as in the statement recorded before the Child Welfare Committee, Annexure P-4 and Annexure P-5, respectively. In her testimony before the Court, Annexure P-2, despite an extensive cross-examination, she has deposed on the lines of the allegations levelled in the FIR.

Any act of sexual assault or harassment of a child of a tender age has to be dealt in a stringent manner. No leniency can be shown to a person who has committed an offence under POCSO Act so that a firm message can be conveyed to the society that any accusation attracting offence under the POCSO Act will not be taken lightly.

Mere fact that the prosecutrix has been examined and the petitioner is in custody for the last 18 months is not sufficient ground to enlarge him on bail as offences under Section 8 and 10 of POCSO Act entail a maximum sentence of rigorous imprisonment of five years. Presumption under Section 29 of the POCSO Act is against the petitioner.

Looked at from any angle, petitioner does not deserve the discretionary relief of bail during the pendency of trial.

Finding no merit in the petition, it is hereby dismissed.

It is clarified that nothing said hereinabove shall be construed to be an expression on the merits of the case and the trial Court shall conclude the trial uninfluenced by any observation made by this Court while dealing with prayer for grant of bail.

18.01.2023
Harish Kumar

(SUVIR SEHGAL)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No