

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

211

CRM-M-40128-2022 (O&M)

Date of Decision: 07.02.2023

Ashish Kumar

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Krishan M. Vohra, Advocate for the petitioner

Ms. Dimple Jain, AAG, Haryana

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner, through instant petition under Section 439 Cr.P.C., is seeking regular bail in FIR No.312 dated 11.05.2022 under Sections 341, 354-D of IPC and Sections 8, 10 and 12 of Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act') registered at Police Station Sadar Thanesar, District Kurukshetra.

2. Mr. Krishan M. Vohra, Advocate appeared and filed his Power of Attorney on behalf of the petitioner. The same is taken on record and Registry is directed to tag at appropriate place.

3. The case of the prosecution is that on 11.05.2022, complainant-father of the victim approached police authorities alleging that he has two school going daughters, who everyday go on by-cycle. One unknown person, on black colour Aactiva while bearing a mask stopped his elder daughter and put his hand on her breast and

misbehaved with her. When his both daughters shouted, then he ran away. On 11.05.2022, he went to leave his daughters to school to catch that person. He followed him in a car and caught hold him and handed over to police.

4. Learned counsel for the petitioner, *inter alia* contends that petitioner was arrested on 11.05.2022 and since then he is in custody. The prime witnesses have already been examined. Offence under Section 10 of POCSO Act is not made out, still Section 10 apart from Sections 8 and 12 of POCSO Act has been added. The petitioner is not involved in any other offence. The petitioner has been wrongly implicated in the commission of alleged offence. The petitioner is permanent resident of District Kurukshetra. The petitioner has deep roots in the society. There is no possibility of flee from justice.

5. Learned State Counsel submits that police report has already been filed and charges stand framed. She further submits that out of 11 witnesses, 4 have already been examined which include prosecutrix and complainant. They have supported the case of the prosecution.

6. Keeping in mind:

- i) The Petitioner is in custody since 11.05.2022;
- ii) Police report under section 173 of Cr.P.C. stands filed, charges stand framed;

- iii) There are 11 prosecution witnesses and till date only 4 have been examined, thus, there is abysmally low possibility of conclusion of trial in near future;
- iv) The material witness i.e. prosecutrix and complainant stand examined;
- v) As prosecution has right to arrest, investigate the matter and restrain an accused from manipulating or winning over witnesses, similarly accused in view of Article 21 of the Constitution of India has right to defend himself and put forth his stand which cannot be possible while in custody;
- vi) Twin stringent conditions of bail prescribed under special statutes like PMLA, UAPA, NDPS Act, Companies Act are not applicable in the case in hand;
- vii) The Petitioner is not involved in any other criminal case;
- viii) The Petitioner is permanent resident of District Kurukshetra;
- ix) The prosecution has not led any convincing/plausible documentary or oral evidence indicating possibility of Petitioner being flee from justice or tempering the evidences or winning over/threatening the witnesses;

this Court is of the considered opinion that present petition deserves to allowed and accordingly allowed. The petitioner is ordered to be released on bail subject to conditions as may be imposed by Trial Court/Illaqa/Duty Magistrate concerned.

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

07.02.2023
Mohit Kumar

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>