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

**CRM-M No.39306 of 2023
Date of Decision: 18.08.2023**

Rajesh Kaushik @ Gaggi

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Mayur Karkra, Advocate
for the petitioner.

Ms. Akshita Chauhan, DAG, Punjab.

RAJESH BHARDWAJ J. (ORAL)

Present third petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case bearing FIR No.210, dated 06.12.2020, under Sections 354A & 323 of Indian Penal Code and Sections 10 & 12 of Protection of Children from Sexual Offences Act, 2012 (Section 376-A or 376-B IPC & Section 6 of POCSO Act deleted vide order framing charge dated 02.09.2021), registered at Police Station Urban Estate, District Patiala.

Brief facts of the case are that on the statement of Harpreet Kaur Sindhu, District Child Welfare Officer, Patiala, the present FIR was lodged against the petitioner under Sections 10 & 12 of POCSO Act. It had been alleged that as per letter No.CWC/PTA/2020/73, dated 04.12.2020 of the Child Welfare Committee, on 01.12.2020, a child-victim No.1, namely,

‘A’ ran away from his house and was going to commit suicide. He was rescued and was kept safely at Child Care Institution. As per the statement of victim No.1, the person staying with his mother, namely, Rajesh Kaushik-petitioner committed wrong act with his 05 year old sister-victim No.2, namely, ‘B’, who is living with his mother. On his statement, a raid was conducted at the house but no one was found present. The prayer was made to take legal action. On the basis of the same, FIR was registered and investigation commenced. The petitioner was arrested on 19.12.2020. On conclusion of the investigation, the challan was presented and the trial Court took cognizance of the offence. The petitioner approached the Court of learned Additional Sessions Judge, Patiala praying for grant of bail. However, after hearing both the sides, learned Additional Sessions Judge declined the same vide its order dated 16.09.2021. Aggrieved by the same, the petitioner on earlier occasion approached this Court by way of filing **CRM-M No.42943 of 2021**. However, the same was allowed to be dismissed as withdrawn vide order dated 28.10.2022. Thereafter, petition filed second petition bearing **CRM-M No.31755 of 2023** which was also allowed to be dismissed as withdrawn vide order dated 25.07.2023. Hence, the petitioner has approached this Court again by way of filing present third petition.

It has been contended by learned counsel for the petitioner that the petitioner has been falsely implicated in this case. He submits that during the investigation, the offences under Sections 376-A, 376-B of IPC and Section 6 of POCSO Act were deleted and hence, the petitioner is

being prosecuted for the charges under Sections 354A, 323 of IPC and Sections 10 & 12 of POCSO Act. He submits that basically it is a dispute between husband and wife i.e. the parents of both the victims and on account of the same, the petitioner has been falsely implicated in this case. He submits that statement of victim No.1 had been recorded under Section 164 Cr.P.C. He further submits that statement of victim No.2, who is 5 years of age, was also recorded under Section 164 Cr.P.C. by the learned Judicial Magistrate 1st Class, Patiala wherein she has deposed that petitioner committed no wrong act with her as alleged whereas her brother, who is living with his father, has been tutored and hence, he has deposed falsely against the petitioner. He submits that male child, i.e. victim No.1 was found on 01.12.2020 whereas the present FIR has been lodged on 06.12.2020 i.e. after a delay of five days. He submits that victim No.2 has been examined as PW-6 and when the accused was produced in the Court through Video Conferencing, she could not recognize him. He submits that victim No.2 deposed that petitioner committed no wrong act with her. However, victim No.1 while being examined by the Court as PW-2, has deposed against the petitioner as he is living with his father and thus, has been tutored to deposed against the petitioner. He submits that the petitioner has no criminal antecedents and he is behind bars since the date of his arrest i.e. 19.12.2020. He further submits that the material witnesses have been examined and thus, the petitioner deserves to be granted bail.

Per contra, learned counsel for the State has opposed the submissions made by learned counsel for the petitioner. She has submitted

that the allegations against the petitioner are serious. She has submitted that there are two victims in this case, who are minors and victim No.1 has deposed in the FIR as well as while being examined as PW-2 by the Court, against the petitioner. She further submits that out of 28 prosecution witnesses, only 10 have been examined and in these facts and circumstances of the case, the petitioner does not deserve the concession of bail.

I have heard learned counsel for the parties and perused the material on record.

As evident from the facts and circumstances of the case, victim No.1, who was 13 years of age, was rescued while allegedly going to commit suicide. He was sent to the Child Welfare Committee where he was kept safely. His statement was recorded and on the basis of the same, FIR was registered. Statement of victim No.2 was also recorded under Section 164 Cr.P.C.. Both the victims have been examined as PW-2 and PW-6, respectively, by the trial Court. Victim No.1, who is living with his father has deposed against the petitioner whereas victim No.2, who is staying with her mother, has denied the allegations made against the petitioner. However, the Court cannot ignore the tender age of both the victims. Be that as it may, the dispute is between their parents, however, there are serious allegations against the petitioner which resulted in allegedly creating a rift in the relationship of the parents of victims. Admittedly, both the victims are living separately, one with father and other with the mother. Though, the petitioner is behind bars from the last

more than 02 years, however, for the consideration of bail, the consequences of the same on the life of both the victims is of paramount consideration at this stage.

In the considered opinion of this Court, granting bail to the petitioner when only 10, out of 28 witnesses have been examined, would be detrimental to the plight of the victims and would prejudice the prosecution case as well. Thus, this Court does not find any merit in the present petition and hence, the same is hereby dismissed. However, the learned trial Court is requested to expedite the trial.

18.08.2023

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(RAJESH BHARDWAJ)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable or not	:	Yes/No