

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

CRM No.M-41423 of 2022 (O&M)

Date of Decision: March 01, 2023

Des Raj

...Petitioner

VERSUS

State of Haryana

...Respondent

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.P.S.Jammu and Mr.Rajinder Partap, Advocates
for the petitioner.

Ms.Ambika Luthra, Addl. Advocate General, Haryana
for the respondent-State.

ARCHANA PURI, J.

Petitioner has filed this third petition under Section 439 Cr.P.C. for grant of regular bail in case FIR No.119 dated 30.05.2019 under Sections 377, 342, 506 read with Section 34 IPC, Sections 6 and 12 of POCSO Act as well as Section 67-A of IT Act, 2000, Police Station Sadar Dabwali, District Sirsa.

Notice of motion was issued. Learned State counsel made appearance on behalf of the respondent-State and has filed the custody certificate.

As per version of the prosecution, the victim was 11 years old 6th grade student. On 26.05.2019, one Ravinder took him at his house from the school, on the pretext of some work. Petitioner-Des Raj was already

present there, who committed penetrative sexual assault upon the victim and one of the companion, namely Ravi prepared the video and accused made it viral. The petitioner also extended threat to kill the victim, if he discloses the occurrence to anyone. However, health of the victim had deteriorated after 2-3 days and thereupon, his father came to know about the incident.

During the investigation, the police got recorded the statement of the victim before the Magistrate, as well as arrested accused persons. The alleged video clip was also recovered.

Now, learned counsel for the petitioner submits that the petitioner is languishing in the jail since 31.05.2019. Despite the long incarceration of the petitioner, the trial has not been concluded. Also, it is submitted that material witnesses i.e. victim as well as complainant, have already been examined and they have not supported the prosecution version. Further, it is submitted that pen drive, allegedly containing the video clip was played in the trial Court, at the time of the recording of the statement of the alleged victim, but however, the same did not contain any video. As such, a prayer has been made for grant of regular bail to the petitioner.

On the other hand, learned State counsel has resisted the claim of bail to the petitioner. She submits that the petitioner had committed grave and serious offence upon the child, who was 11 years old. She also submits that in the case in hand, out of 27 cited witnesses, only two witnesses are left to be examined. However, she does not dispute recording of statement of the complainant as well as the victim. She submits that the victim, in the examination-in-chief, had supported the version of the prosecution, but in the cross-examination, on account of the pressure exerted by the petitioner, he deviated from the prosecution version.

However, learned State counsel concedes that in the pen drive, which was played in the trial Court, nothing was found qua the video clip.

Copies of the statements of victim as well as the complainant, which were got recorded, during the course of trial, have been placed on record along with paper book. Perusal of the same reveals that complainant has not supported the prosecution version in toto. However, the victim had, though supported the version of the prosecution in his examination-in-chief, but however, in the cross-examination, he has deviated from the prosecution version.

As per the custody certificate, placed on record, the petitioner is in custody for more than 3 years 8 months and 25 days. As such, he has faced long incarceration. Still, conclusion of the trial, shall take considerable time.

Considering the aforesaid circumstances, as spelt out from the submissions, so made, by learned counsel for the petitioner and as conceded by learned State counsel and considering the long incarceration already faced by the petitioner, at this stage, without any expression on merits of the case, this Court deem it appropriate to grant regular bail to the petitioner. Accordingly, the present petition is allowed and the petitioner is ordered to be released on bail subject to his furnishing personal/surety bonds to the satisfaction of the learned trial Court/Duty Magistrate concerned.

(ARCHANA PURI)
JUDGE

March 01, 2023
Vgulati

Whether speaking/reasoned
Whether reportable

Yes
Yes/No