

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CRM-M-41100-2023

DATE OF DECISION: *September 25, 2023*

Sanjay

... Petitioner

Versus

State of Haryana and another

... Respondents

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present: Mr. Kunal Dawar, Advocate,
for the petitioner.

Mr. Surinder Kumar Dagar, DAG, Haryana.

Mr. Vipul Sharma, Advocate,
for respondent No.2.

Vivek Puri, J.

1. Petitioner is seeking anticipatory bail in case bearing FIR No. 74, dated 10.07.2023, under Section 10 of the Protection of Children from Sexual Offences Act (for short 'POCSO Act') and Section 323 of the Indian Penal Code, registered at Police Station Women, Ballabhgarh, District Faridabad.

2. Briefly, the FIR has been registered on the statement of the victim, who is aged about 7 years, alleging that she is a student of 2nd class and her mother works in an NGO. Her father i.e. the petitioner works in a school. During the period of lock down, her father had given beating

to her and done bad touch with the upper body part and private parts. On her refusal, the petitioner told that in the event she informed about the incident to her mother, he will give beatings to her. One day, the victim was not consuming food and on the asking of the mother, she disclosed about the act of her father.

3. Learned counsel for the petitioner contends that the marriage of the petitioner was solemnized with the mother of the victim and the victim was born on 25.08.2016. The petitioner had instituted a petition for dissolution of marriage under Section 13 of the Hindu Marriage Act and the same was allowed ex-parte in terms of judgment and decree dated 17.08.2022 by the learned Family Court, South East District, Saket, New Delhi. The mother of the victim had moved an application under Order 9 Rule 13 CPC for setting aside the ex-parte judgment and decree dated 17.08.2022 and during the course of said proceedings, it was submitted that the petitioner had re-married. Such factual aspect has been recorded in the order dated 07.07.2023 passed by the learned Family Court. Thereafter, the present FIR has been registered and that too after a delay of about 2 years from the occurrence. Moreover, the matrimonial dispute between the petitioner and the mother of the victim has been amicably settled.

4. Learned counsel appearing on behalf of respondent no.2 submits that an amicable settlement has been effected between the petitioner and the mother of the victim and he has no objection if the anticipatory bail is granted to the petitioner.

5. Learned State counsel has opposed the bail application on the score that there are specific and categoric allegations leveled against the petitioner by the victim, who is his 7 years old daughter. On the following day of the registration of the FIR, the statement of the victim under Section 164 Cr.P.C. has also been recorded. Learned Magistrate had put preliminary questions to the victim and after recording satisfaction to the effect that the victim understands the sanctity of oath and is capable of giving in rational answers, her statement has been recorded. Even in the said statement, the victim has leveled specific and categoric allegations against the petitioner. Even the notice under Section 41-A Cr.P.C. has been issued, but the petitioner had not joined the inquiry/investigation.

6. It is significant to note that the victim is aged about 7 years and is the daughter of the petitioner. The parents of the victim were having marital discord. As per the allegations, during the period of lockdown, the mother had sent the victim to the house of her father, as they were residing separately. The petitioner had inappropriately

touched the victim and even threatened her. The FIR has been registered on the basis of the statement of the victim. Even she has reiterated her allegations imputed against her father in the statement under Section 164 Cr.PC. The copy of the statement under Section 164 Cr.P.C. has also been perused and it indicates that the same is quite natural and at this stage, it cannot be said that the same is a tutored version.

7. Moreover, the case as put forth against the petitioner cannot be disputed at this stage on the ground of delay, particularly because, the victim was aged about 7 years at the time of registration of the FIR and was aged about 5 years when occurrence took place. The effect of delay, if any, is to be seen by the trial Court at the appropriate stage. Moreover, in the event, any compromise has been effected by the mother of the victim with the petitioner, it cannot be termed to be a circumstance to ignore and side-track the allegations as put forth against the petitioner at the instance of the victim. The object of the POCSO Act is to provide care and protection of the children. Even, if the mother of the victim is prepared to condone the indecent and illegal act of her husband, it cannot be termed to be a justified ground to grant concession of anticipatory bail to the petitioner, particularly in view of the gravity of the

allegations, nature of accusation, age of the victim and pious relation with the victim.

8. The anticipatory bail is not to be granted lightly. It can be granted only after careful assessment of the entire facts and circumstances emerging in the instant case and in the event exceptional circumstances are made out.

9. Keeping in view the entire facts and circumstances in the instant case, no exceptional circumstances are made out to extend the concession of pre-arrest bail to the petitioner.

10. The instant petition is dismissed, accordingly.

September 25, 2023

vk

(Vivek Puri)
Judge

Whether speaking/reasoned: Yes/No

Whether reportable : Yes/No