

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

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CRM-M No.47416 of 2023 (O&M)
Date of decision: 14.12.2023

Jitender @ Bablu

... Petitioner

Vs.

State of Haryana and another

... Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Manish Mehta, Advocate,
for the petitioner.

Ms. Ankita Ahuja, AAG, Haryana,
for the respondent-State.

MANISHA BATRA, J.

1. This petition has been filed by the petitioner seeking concession of pre arrest bail in case arising out of FIR No.62 dated 08.02.2023 registered under Sections 452 and 506 of IPC and Sections 8 and 17 of the Protection of Children from Sexual Offences Act, 2012 (For short "POCSO Act") at Police Station Sadar Mahendergar, District Mahendergarh on the basis of a written complaint filed by the complainant "N" (name withheld) alleging therein that on the night of 07.02.2023, her daughter "P" (name withheld) who is about 15 years old had slept along with her in the room. In the night, the complainant had woken up and found that her daughter was not present in the room. She went outside and found that the accused Mohit who was already known to her, had gagged the mouth of her daughter and was doing wrong acts

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with her forcibly. On seeing the complainant, he ran away. The complainant alleged that her daughter told her that previously on 07.11.2022, the accused Mohit had committed rape upon her while threatening her and on that day also, he had taken her to another room while extending threat to kill her and had ravished her. She prayed for taking action against the culprit. On her complaint, initially a case under Sections 452 and 506 of IPC read with Section 4 of POCSO Act was registered. Investigation proceedings were initiated. The statement of the victim was recorded under Section 164 of Cr.P.C. wherein she disclosed the involvement of the present petitioner by saying that when on 07.02.2023, while the accused Mohit was committing wrong act with her, the petitioner was asking him to click her photographs in that condition. During investigation, offences under Sections 8 and 17 of POCSO Act were added. The accused Mohit was arrested. The present petitioner was found to be innocent and had not been arrested and challaned. After completion of investigation, challan was presented against the co-accused in the Court. During trial, the statement of the victim was recorded before the Court. Thereafter, an application under Section 319 of Cr.P.C. was moved by the prosecution for arraigning the present petitioner as an additional accused which was allowed vide order dated 08.08.2023 and the present petitioner was ordered to be summoned as an additional accused to face trial along with the accused already arraigned.

2. The present petition has been filed by the petitioner seeking pre arrest bail on the grounds and it has been argued by his counsel that he

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has been falsely implicated in this case. He was not named in the FIR nor he was seen by the complainant i.e. the mother of the victim at the spot at the time of the occurrence allegedly committed by the co-accused Mohit. The allegations against him were baseless. He was implicated in this case due to family rivalry over property dispute being son of the real uncle of the victim. In her statement recorded under Section 161 of Cr.P.C. on 08.02.2023, the victim had not implicated him in the commission of the subject offences. Even at the time of her medico legal examination, she had implicated only accused Mohit in the offence. The police had conducted thorough investigation in the matter and had found him to be innocent. His custodial interrogation was not required nor any recovery is to be effected from him. Therefore, it has been prayed that he deserves to be given concession of bail.

3. It will not be out of place to mention here that vide order dated 20.09.2023, the petitioner was directed to appear before the trial Court within a fortnight and on his appearing so, he was directed to be released on bail on his furnishing bonds to the satisfaction of the trial Court.

4. Today, the learned State counsel has filed status report as per which, the petitioner had appeared before the trial Court on 26.09.2023 and has furnished bonds to the satisfaction of trial Court. It is also submitted that charges under Sections 452 and 506 of IPC read with Sections 6, 8 and 17 of the POCSO Act, have been framed against the petitioner as well as the co-accused. It is submitted by learned State counsel that there are serious allegations against the petitioner. Hence, it

is argued that he does not deserve to be given concession of bail.

5. The petitioner along with the co-accused is alleged to have criminally trespassed into the house of the complainant on the night of 07.02.2023 and is alleged to have abetted the commission of offence of rape as well as sexual assault upon the victim. He has been summoned as an additional accused in pursuance of an order passed by learned trial Court on an application filed under Section 319 of Cr.P.C. Undoubtedly, his custodial interrogation is not required. Neither any recovery is to be effected from him. However, at the same time, this fact cannot be ignored that the allegations against him are quite serious in nature. Only because of the fact that no case for custodial interrogation is made out, benefit of anticipatory bail is not to be granted to an accused as it is a misconception that anticipatory bail must be granted in such cases. In the considered opinion of this Court, the first and foremost thing that the Court hearing anticipatory bail application should consider is that the prima facie case put up against the accused. The nature of the offence is also to be looked into along with the severity of the punishment thereof. Reliance in this regard can be made to a recent judgment of Hon'ble Supreme Court pronounced on 21.10.2022 in case bearing Criminal Appeal No.1834 of 2022 arising out of SLP (Criminal) No.7188/2022 titled as *Sumitha Pradeep v. Arun Kumar C.K.*

6. Keeping in view the gravity of the offences alleged to have been committed by the petitioner, the quantum of sentence which the conviction may entail and the attendant facts and circumstances but

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without meaning to make comment on the merits of the case, I am of the considered opinion that the petition does not deserve to be allowed. Hence, the same is dismissed.

7. Miscellaneous application(s), if any, also stand disposed of.

14.12.2023
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(MANISHA BATRA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No