

2023:PHHC:155055

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

CRM-M-47084-2023 (O&M)

Date of Decision: 05.12.2023

RAKESH @ RAKESH KUMAR @ AKASHDEEP @ KAKA @ KAKU

... PETITIONER

VS.

STATE OF PUNJAB

.. RESPONDENT

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present : Mr. Prateek Pandit, Advocate
for the petitioner.

Mr. Hittan Nehra, Additional Advocate General, Punjab.

Mr. Tushar Sharma, Advocate
for the complainant.

VIVEK PURI, J.(ORAL)

1. The petitioner is seeking regular bail in the case bearing FIR No.295 dated 23.12.2022 under Sections 354-A(1)/354-D/201/506/509/323/427 IPC and Section 12 of the POCSO Act registered at Police Station City, Kapurthala.

2. Status report by way of affidavit of Gurmeet Singh, Deputy Superintendent of Police, Sub Division Kapurthala and custody certificate have been placed on record.

3. Learned counsel for the petitioner contends that the allegations against the petitioner are with regard to causing sexual harassment to the victim, who is stated to be aged about 15 years and inflicting injuries on the person of father of the victim. The injury falls under Section 323 IPC. The petitioner is in custody for a period of 10 months and 29 days. As per the custody certificate, two other cases are stated to be pending against the petitioner. In one of the cases bearing FIR No. 188 dated 01.08.2018 under

Sections 354/354-A/354-D/506/341 IPC and Section 12 of the POCSO Act, Police Station City Kapurthala, the petitioner has been acquitted and is on bail in another case bearing FIR No. 272 dated 30.11.2022 under Sections 354/354-A/354-D/506/509 IPC and Section 8 of the POCSO Act, Police Station City Kapurthala. Besides, as per the custody certificate, the production warrants of the petitioner are stated to have been issued in two cases. The petitioner has been acquitted in the case bearing FIR No. 167 dated 13.07.2018 under Sections 363/366-A/376/120-B IPC & Sections 03/04 of the POCSO Act, Police Station City Kapurthala and is on bail in the case bearing FIR No.209 dated 07.08.2019 under Sections 379-B/341/427/506/411 IPC, Police Station City Kapurthala. The charge in the instant case was framed as back as on 20.02.2023. The victim and the complainant have not appeared despite the fact that the case in the trial Court was listed for prosecution evidence for 09 dates of hearing.

4. On the previous date of hearing, it was submitted by learned State counsel that endeavour shall be made to get the statement of the victim recorded on 18.11.2023. However, it has not been disputed that the statement of the victim has not been recorded despite aforesaid submission which was made in the Court.

5. The offence under Section 12 of the POCSO Act is punishable with imprisonment for a period of three years. There is nothing to indicate that the petitioner is a previous convict with regard to any offence under the POCSO Act.

6. Learned State counsel and counsel for the complainant have opposed the bail application on the score that there are categorical allegations levelled by the victim as well as the complainant against the petitioner.

7. It is significant to note that the charge in the instant case was framed as back as on 20.02.2023. The statement of the victim and the complainant have not been recorded despite the fact that the case was adjourned for 09 dates of hearing for prosecution evidence. Even the previous date of hearing, learned State counsel has submitted that endeavour shall be made to record the statement of the victim on 18.11.2023. It has not been disputed that the statement has not been recorded till date. The petitioner is in custody for a period of 10 months and 29 days. The maximum punishment prescribed for offence under Section 12 of the POCSO Act is three years. The conclusion of trial is likely to take some time and no fruitful purpose will be served by detaining the petitioner in further custody.

8. In such circumstances, sufficient grounds are made out to extend the concession of bail to the petitioner. Accordingly, without making any observation on the merits of the case, the present petition is allowed and petitioner is ordered to be released on bail, subject to his furnishing bail/surety bonds to the satisfaction of concerned trial Court/Chief Judicial Magistrate/Duty Magistrate.

05.12.2023
smriti

(VIVEK PURI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No