

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRM-M-51111-2023(O&M)

Date of decision: 13.10.2023

Kuldeep Kumar

...Petitioner(s)

Vs.

State of Punjab

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: - Mr. Vijay Rana, Advocate
for the petitioner.

Mr. Jaswinder Singh Arora, DAG Punjab.

NIDHI GUPTA, J.

Prayer in the present petition filed under Section 439 Cr.P.C. is for grant of bail to the petitioner in case FIR No.70 dated 23.06.2022 under Sections 376, 376(2), 506 IPC and Sections 3, 4 and 6 of POCSO Act, 2012 (Sections 376(2) and 506 IPC added later on) registered at Police Station Satnampura, District Kapurthala (Annexure P1).

2. FIR in the present case was registered on the basis of statement of mother of the victim and the same reads as follows:-

"Statement of Sonia Wife of Kuldeep Kumar, Resident of Mast Nagar, Police Station Satnampura aged 30 years, Phone No. 9779747135. Stated that I am resident of above address and is doing household work. I am having two children out of which one daughter namely as Tamana, aged about 14 years and her date of birth is 18.09.2008 and she is studying in the eighth class and one son namely as Anil Kumar who is aged about 10 years. One month ago I alongwith my both the children went to my parents at Village Sherpur Grind, District Hoshiarpur and after 15 days from going to the parents house my daughter

Tamana mentioned to me that she is having pain in her stomach. On which I asked my daughter thoroughly, then my daughter Tamana mentioned that when you went to the houses of the people in Village Mast Nagar for doing work, then in your absence my father was doing wrong with me on getting the occasion. My father has committed wrong with me twice and he was threatening me that, if you mention to anyone then you will be put to death. There is pain in my stomach, but out of shame I was not talking to anyone in this regard. Today with dare I alongwith my daughter coming to give the intimation that you met....”.

3. Learned counsel for the petitioner inter alia submits that the allegations made in the FIR are false and fabricated as petitioner is the father of the victim. It is submitted that the present FIR has been registered at the instigation of wife of the petitioner as there is matrimonial dispute between the petitioner and the complainant. It is further submitted that no date and time of the alleged occurrence has been mentioned in the FIR. Even as per Forensic DNA Report dated 23.02.2023 (Annexure P2) no human semen was detected on the exhibits submitted. The present FIR has been registered with the sole intention of harassing and humiliating the petitioner. Learned counsel further states that the petitioner has been behind bars since 02.05.2022 and therefore he may be enlarged on bail, pending trial.

4 Learned State counsel files Custody Certificate dated 12.10.2023, which is taken on record. As per the said custody certificate the petitioner has been in custody as undertrial for 1 year 3 months 20 days.

Learned counsel further states that in the present case five witnesses

including the complainant and the victim have been examined both of whom have supported the prosecution case in their respective testimonies.

5. I have heard learned counsel for the parties.

6. Without commenting on the merits of the matter, however, keeping in view the totality of the facts and circumstances of the case including the gravity of the allegations made against the petitioner; and the fact that the victim was only about 14 years of age at the time of commission of alleged heinous offence; as also the fact that five witnesses have already been examined and trial is nearing conclusion, present petition is accordingly **dismissed**.

7. However, nothing stated above shall be construed as an expression of opinion on the merits of the matter.

8. Pending application(s) if any also stand(s) disposed of.

13.10.2023

Sunena

(Nidhi Gupta)

Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No