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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-57974-2022 (O&M)

Date of Decision: 29.03.2023

Bakhtawar Singh @ Lucky

....Petitioner(s)

Versus

State of Punjab

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Ruhani Chadha, Advocate, for the petitioner.

Ms. Akshita Chauhan, DAG, Punjab.

JASGURPREET SINGH PURI, J. (Oral)

The present is second petition filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioner in FIR No. 93 dated 13.06.2016, under Section 377 IPC and Sections 4 & 6 of POCSO Act, registered at Police Station Sadar Amritsar, District Amritsar.

Learned counsel for the petitioner has submitted that the petitioner is in custody from 29.10.2019 which is almost 3 ½ years and as per the allegations which have been contained in the FIR, the petitioner who is the real uncle of the victim who was of the age 3 ½ years was residing in the same house as that of the father of the victim and there was already property dispute between the brothers and even litigation was also pending between the brothers and it was in order to implicate the petitioner in this false case that the present wrong complaint was given to the police on the

basis of which he was arrested. He submitted that although medical was conducted thereafter of the victim but during the course of trial even DNA matching was also conducted and he referred to Annexure P-4 wherein in the DNA matching it was found that the swab which was taken from the victim and that of the petitioner did not match and therefore it has become crystal clear that the present case was planted upon the petitioner for some ulterior purposes by none others but by the complainant who is the sister-in-law of the petitioner. He submitted that be that as it may, now 7 out of 23 prosecution witnesses have already been examined and all the material witnesses have been examined including the complainant and the petitioner has faced incarceration for 3 ½ years and therefore, he may be considered for the grant of regular bail. He further submitted that petitioner is not involved in any other case and has got clean antecedents.

On the other hand, Ms. Akshita Chauhan, Learned Deputy Advocate General, Punjab has submitted that it is correct that the petitioner has faced incarceration for 3 ½ years and now 7 witnesses including the material witnesses and the complainant have been examined. She has however opposed the grant of bail on the ground that as per the medical report injuries were found on the sensitive part of the child and since it was a case of a child abuse, the petitioner does not deserve the concession of regular bail.

I have heard the learned counsel for the parties.

The petitioner has already faced incarceration for 3½ years . Seven witnesses have already been examined including the complainant.

The petitioner is stated to be not involved in any other case. As per the

learned counsel for the petitioner, there was a pre-litigation between the parents of the victim and the petitioner with regard to property dispute because they are real brothers. As per the DNA report attached alongwith the present petition, there was no matching of the swab which was taken from the victim and the petitioner, as per the learned counsel for the petitioner. Furthermore, it is not the case of the learned State counsel that in case the petitioner is released on bail, then he may abscond or may influence any witness especially when the material witnesses have been examined.

Therefore, considering the aforesaid totality and circumstances of the present case and especially the long custody of the petitioner which is for 3 ½ years, this Court deems it fit and proper to grant regular bail to the petitioner.

Consequently, the present petition is allowed. The petitioner shall be released on regular bail subject to furnishing bail bonds/surety to the satisfaction of the learned trial Court/Duty Magistrate concerned.

However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is meant for the purpose of deciding the present petition only.

29.03.2023

rakesh

Whether speaking
Whether reportable

**(JASGURPREET SINGH PURI)
JUDGE**

: Yes/No
: Yes/No