

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**119****CRWP No.10893 of 2023****Date of Decision : 20.12.2023**

Sxxxx through his Father

....Petitioner

VERSUS

State of Haryana and Another

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Rajesh Ranjan, Advocate for the petitioner.

Ms. Mahima Yashpal, DAG Haryana.

ALKA SARIN, J. (Oral)

1. The prayer in the present petition is for granting interim protection to the petitioner in FIR No.333 dated 16.09.2023 under Sections 354-C, 376, 506, 120-B and 34 of the Indian Penal Code, 1860 and Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 registered at Police Station Urban Estate Rohtak, District Rohtak and for quashing of the same.

2. The brief facts relevant to the present case are that a complaint was registered on the statement of the complainant on 16.09.2023 wherein she alleged that one student, namely, S (petitioner herein), used to study with her. As a classmate they became friends and their teacher knew about it. It is further the allegation that they along with 8-10 other classmates used to study and enjoy together. However, her family came to know about it and asked her to stay away from the said friend circle and to concentrate on her studies after which she stopped talking to the petitioner and others. On

04.03.2023 her teacher asked her to come to a get together of all the students which she had organized at the house of one of her students'. When the complainant reached the given address and entered the house she was shocked to see that nobody was present inside the house. Suddenly, the petitioner came and closed all the doors of the house. She got worried and screamed but it was all in vain. The petitioner forcibly took her to his room and took off her clothes and forced himself upon her and thereafter took some objectionable pictures of her. He also snatched her mobile phone and transferred her personal photos to his phone and threatened her. She is stated to have gone in deep shock and depression due to the said incident. Thereafter, it was alleged, that she was able to overcome the said incident and after sometime went for tuition but on that day also, after the tuition got over, the petitioner threatened her that he had nude photographs of her and asked her to come to his house again. However, in a state of fear she ran away from there and came to her own house and narrated the incident to her family. On the basis of the said statement the present FIR was registered. Thereafter, statement of the complainant was recorded under Section 164 CrPC on 16.09.2023. Her medical was also conducted on 16.09.2023.

3. The petitioner thereafter approached this Court for grant of anticipatory bail by filing CRM-M-51268-2023 which was disposed off vide order dated 10.10.2023 with the following observations :

“3. Learned counsel for the petitioner is unable to convince this Court that the present petition under Section 438 CrPC for grant of anticipatory bail would be maintainable when there is a special enactment dealing with juveniles. Learned counsel for the

petitioner, after arguing for sometime, seeks liberty to avail his alternate remedies. He states that the petitioner is ready and willing to appear and surrender before the Juvenile Justice Board concerned.

4. In view of the limited prayer made by learned counsel for the petitioner, the present petition is disposed off with a direction to the petitioner to appear and surrender before the Juvenile Justice Board concerned within a period of 10 days from today. Till then, no coercive steps be taken against the petitioner. In the event of the petitioner failing to surrender before the Juvenile Justice Board within a period of 10 days from today, the present petition shall be deemed to having been dismissed. In case on appearance the petitioner moves an application for bail under Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015, the same shall be decided expeditiously, in accordance with law.”

4. The petitioner did not comply with the order dated 10.10.2023 and approached this Court by way of the present petition which was filed on 04.11.2023 seeking blanket protection and for quashing of the FIR wherein the head-note reads as under :

“Criminal Writ Petition under Article 226 of the Constitution of India read with Section 482 CrPC for issuance of a Writ of Mandamus etc. or any order to the respondents in respect of FIR No.333/2023 for

protection of minor petitioner and for issuance of a writ of certiorari for quashing of FIR No.333/2023 dated 16.09.2023 and 41A CrPC notice dated 21.10.2023 and to direct the respondent to allow the petitioner to join the investigation proceedings at his residence without being subjected to coercive measures and to direct the respondents to refrain from unlawful proceedings against the petitioner and to expedite action on the petitioner's complaint and to pass any other or further orders as this Hon'ble Court may deem fit and proper in the circumstances of the present case."

5. In the present petition it has been stated that the following questions of law arise :

"1. Whether a juvenile can apply for anticipatory bail application or pre arrest bail?

2. Whether POCSO Act applies in case of minor accused aged less than 16 years of age at the time of alleged incident?

3. Whether POCSO Act applies in case of romantic and consensual affair between two juveniles/ minors

4. Whether section 12 of the Juvenile Justice Act bars a juvenile from preferring application under section 438 CrPC. If yes then whether it amounts to unreasonable classification and is hit by Article 14?

5. Whether, non obstante clause used in the middle of section 12 of JJ Act is restricted to conditions related to

release of the juvenile after he is brought to or he surrenders before the board or it also applies to the stage before apprehension, appearance or surrender?

6. *Whether a relief such as per arrest bail that has been denied on the technical ground of non-maintainability of such application under section 438 CrPC by juvenile by a single judge bench of the Hon'ble High court be granted in the extraordinary jurisdiction of the court in a petition under Article 226?*

7. *Whether silence of the JJ Act on the subject of Anticipatory bail implies negation of the same as the intent of the law makers?*

8. *Whether a cryptic FIR filed after inordinate delay and followed by two consecutive statements of the prosecutrix improvising the statements recorded in the FIR is liable to be quashed or in the alternative liable to be subjected to preliminary investigation into the veracity of the statements in the complaint?*

The following prayers have been made in the present petition :

“It is, therefore, prayed that this Hon'ble Court be graciously pleased to:

- a) Petition under article 226 of the Constitution of India read with Section 482 CrPC for issuance of a writ of mandamus, etc or any order to the respondents in respect of FIR No.333/2023 for protection of minor petitioner and for issuance*

of a writ of certiorari for quashing of FIR No.333/2023 dated 16.09.2023 and 41A CrPC notice dated 21.10.2023 and to direct the respondent to allow the petitioner to join the investigation proceedings at his residence without being subjected to coercive measures and to direct the respondents to refrain from unlawful proceedings against the petitioner and to expedite action on the petitioner's complaint and to pass any other or further orders, as this Hon'ble court may deem fit and proper in the circumstances of the present case

b) issue a writ in the nature of Mandamus for directing the Respondents to abstain from using coercive measures against the minor petitioner and writ of certiorari for quashing the notice under section 41A CrPC dated 21.10.2023 or writ of certiorari for quashing the FIR No.333/2023 dated 16.09.2023 against the minor petitioner the any other writ, order or direction as may be deemed appropriate by this Hon'ble Court.

c) To direct the Respondent to allow the petitioner to join the investigation proceedings at his residence without being subjected to coercive measures.

- d) To direct the Respondents to refrain from unlawful proceedings against the petitioner and to expedite action on the petitioner's complaint.*
- e) Pass any other or further orders, as this Hon'ble Court may deem fit and proper in the circumstances of the present case.*
- f) May kindly be exempted from filing original copies of annexure and grant permission for filing true translated/photocopies of the same (annexure P-1 to P-14)."*

6. The present case was listed for preliminary hearing on 08.11.2023 and was adjourned to today for filing of a status report. It is apt to notice that no interim relief was granted on 08.11.2023 by this Court. Learned counsel for the petitioner has informed the Court that subsequently the petitioner approached the Hon'ble Supreme Court by filing Special Leave to Appeal (Crl.) No.15843 of 2023 challenging the order dated 10.10.2023 passed in CRM-M-51268-2023. In the said Special Leave to Appeal the petitioner has been granted interim protection till the next date of hearing i.e. 08.01.2024.

7. Reply by way of affidavit of Sh. Sandeep Kumar, HPS, Deputy Superintendent of Police, HQ, Rohtak filed by learned State counsel is taken on record. Registry to scan the same and tag at the appropriate place. As per the reply, the petitioner did not surrender within 10 days granted to him vide order dated 10.10.2023 passed in CRM-M-51268-2023.

8. Learned counsel for the petitioner has contended that there are following infirmities in the FIR :

- i. There is inordinate delay of over 6 months in lodging of the FIR
- ii. The prosecutrix does not specify the address of the house where she was called by her teacher for party and where the alleged offence took place.
- iii. The prosecutrix states that there was no one in the house and suddenly the Petitioner came and disrobed her. This statement has inherent flaws. It is not believable that the petitioner could have overpowered her without any help.
- iv. The prosecutrix states that the petitioner first took her nude picture on her phone and thereafter he transferred the pictures to his phone. The question that arises is that what was the prosecutrix doing while the petitioner was transferring the pictures from her phone to his own phone.
- v. There is no mention of the time and place of occurrence.
- vi. The prosecutrix states that she started taking tuitions again after sometime but did not say any thing to her parents. This is also not palatable to a reasonable mind.
- vii. The prosecutrix states that when the petitioner asked her to obey her commands otherwise he would upload her pictures on the web, she went to her home and told everything to her parents. Time and date of this

incident is not stated. Another question that arises is that when the parents were informed of the incident why didn't they expeditiously approach the police and what made them wait for long? There are glaring ambiguities in the statements of the prosecutrix.

viii. There is a reasonable hypothesis: The family members of the prosecutrix could have chosen a nearer date for their concocted plot but they wanted to choose a date on which the prosecutrix was considerably aged less than 16 so that the hardships of the petitioner could be accentuated by abuse of the process of law.

ix. There are clear evidences to show that the prosecutrix had known her tuition teacher since she was in class 11 and the petitioner joined in April 2023, nearly a month after the date of the alleged incident.

9. Learned State counsel on instructions from SI Sukhbir Singh has stated that after the order passed by Hon'ble Supreme Court on 13.12.2023 the petitioner has not joined the investigation despite his father being duly informed. Learned State counsel has further pointed out that in the present case the matter is still at the initial stage inasmuch as the investigation is going on and the petitioner has not even joined the investigation.

10. I have heard learned counsel for the parties.

11. In the present case initially the petitioner had approached this Court for grant of anticipatory bail by filing CRM-M-51268-2023 which was disposed off vide order dated 10.10.2023. A perusal of the order dated

10.10.2023 reveals that the counsel for the petitioner, after arguing for sometime, sought liberty to avail his remedies in law and stated that the petitioner is ready and willing to appear and surrender before the Juvenile Justice Board. In view of the limited prayer made by the counsel, the petition was disposed off with a direction that the petitioner would appear and surrender before the Juvenile Justice Board concerned within a period of 10 days from the date of passing of the order and till such time no coercive steps would be taken. The petitioner failed to appear before the Board and instead filed the present omnibus petition seeking various reliefs including a blanket protection from arrest. When no interim relief was granted on the first date of hearing i.e. 08.11.2023, the petitioner challenged the order dated 10.10.2023 before the Hon'ble Supreme Court by filing Special Leave to Appeal (Crl.) No.15843 of 2023 wherein the following order was passed on 13.12.2023 :

“1. Issue notice, returnable on 08.01.2024.

2. Having regard to the submissions made by the learned senior Counsel, Mr. Yatendra Singh that the petitioner is a student of Class XII - Science Stream and his pre-Boards examination are scheduled to commence from 14.12.2023, and that if he is not allowed interim protection, his career will be ruined, it is directed that the petitioner shall not be arrested in connection with the F.I.R. No.333 of 2023 dated 16.09.2023 registered at Urban Estate Police Station, Rohtak, till the returnable date, subject to the condition that the petitioner shall cooperate with the investigation.”

12. The prayers made in the present petition have been reproduced above. As far as the prayer for protection of the petitioner is concerned, this Court vide order dated 10.10.2023 passed in CRM-M-51268-2023 had granted the petitioner protection for 10 days for him to approach the Juvenile Justice Board and for moving an application under Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015. The petitioner failed to appear before the Board and filed the present petition instead. The petitioner thereafter challenged the order dated 10.10.2023 passed in CRM-M-51268-2023 before the Hon'ble Supreme Court by filing Special Leave to Appeal (Crl.) No.15843 of 2023. The Hon'ble Supreme Court is already seized of the matter and hence the question of granting any further protection to the petitioner does not arise in the present case. Further prayer made in the present petition is for quashing of the present FIR. The Hon'ble Supreme Court in the case **M/s Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra & Ors. [Criminal Appeal No.330 of 2021 decided on 13.04.2021]** has answered the questions as to when the High Court would be justified in interfering with the investigation by the Police while exercising the inherent power under Section 482 CrPC and/or Article 226 of the Constitution of India and in para Nos.10 and 11 of the said judgment it was held as under :

“10. From the aforesaid decisions of this Court, right from the decision of the Privy Council in the case of Khawaja Nazir Ahmad (supra), the following principles of law emerge:

i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure

contained in Chapter XIV of the Code to investigate into cognizable offences;

ii) Courts would not thwart any investigation into the cognizable offences;

iii) However, in cases where no cognizable offence or offence of any kind is disclosed in the first information report the Court will not permit an investigation to go on;

iv) The power of quashing should be exercised sparingly with circumspection, in the 'rarest of rare cases'. (The rarest of rare cases standard in its application for quashing under Section 482 Cr.P.C. is not to be confused with the norm which has been formulated in the context of the death penalty, as explained previously by this Court);

v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

vi) Criminal proceedings ought not to be scuttled at the initial stage;

vii) Quashing of a complaint/FIR should be an exception and a rarity than an ordinary rule;

viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities. The

inherent power of the court is, however, recognised to secure the ends of justice or prevent the abuse of the process by Section 482 Cr.P.C.

ix) The functions of the judiciary and the police are complementary, not overlapping;

x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. During or after investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which

may be considered by the learned Magistrate in accordance with the known procedure;

xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint; and

xv) When a prayer for quashing the FIR is made by the alleged accused, the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether or not the allegations in the FIR disclose the commission of a cognizable offence and is not required to consider on merits whether the allegations make out a cognizable offence or not and the court has to permit the investigating agency/police to investigate the allegations in the FIR.

11. Whether the High Court would be justified in granting stay of further investigation pending the proceedings under Section 482 Cr.P.C. before it and in what circumstances the High Court would be justified is a further core question to be considered. Before passing

an interim order of staying further investigation pending the quashing petition under Section 482 Cr.P.C. and/or Article 226 of the Constitution of India, the High Court has to apply the very parameters which are required to be considered while quashing the proceedings in exercise of powers under Section 482 Cr.P.C. in exercise of its inherent jurisdiction, referred to hereinabove.”

13. Though learned counsel for the petitioner has sought to argue the matter on merits, however, in the opinion of this Court the same cannot be gone into at this stage. From a reading of the FIR it cannot be said that no cognizable offence is made out. This Court, at this nascent stage of the investigation, cannot go into the merits of the allegations in the FIR and the Police must be permitted to complete the investigation. It would be hasty to reach a conclusion that the FIR does not deserve to be investigated or go into the reliability and genuineness of the allegations made in the FIR. The investigation is at the initial stage and the petitioner, despite the order passed by the Hon'ble Supreme Court on 13.12.2023, has not joined the investigation till date. Though this is disputed by learned counsel for the petitioner, be that as it may, the fact remains that the entire matter is still at the investigation stage and hence no interference is called for at this juncture. This Court is constrained to observe that the petitioner, despite two orders granting him interim protection, has failed to comply with both the orders. Having failed to get the order in the petition for grant of anticipatory bail from this Court the counsel sought liberty to approach the Board, which concession was granted to the petitioner and he was protected for 10 days to

enable him to approach the Board. The petitioner instead of complying with the said order has yet again approached this Court by way of the present petition and having failed to persuade this Court to grant an interim order approached the Hon'ble Supreme Court. The conduct of the petitioner amounts to forum shopping.

14. In view of the above, the present petition is dismissed accordingly at this stage being premature. Pending applications, if any, also stand disposed off.

15. It is also made clear that any observation made herein shall not be treated as an expression of opinion on the merits of the case.

(ALKA SARIN)
JUDGE

20.12.2023
jk

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO