

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**CRM-M-60443-2022 (O&M)****Date of decision: 17.07.2023****Babu Ram****...Petitioner(s)****Vs.****State of U.T. Chandigarh****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA****Present:-** Mr. Vivek Chauhan, Advocate
for the petitioner.

Mr. A.M. Punchhi, P.P. U.T. Chandigarh.

NIDHI GUPTA, J.

Prayer in the present first petition under Section 439 of Code of Criminal Procedure (hereinafter referred to as "Cr.P.C.") is for grant of regular bail to the petitioner in case FIR No.150 dated 28.08.2021 under Sections 376(3), 354-A IPC and Section 6 of POCSO Act registered at Police Station Manimajra, Chandigarh.

2. FIR was registered on the basis of complaint filed by mother of victim, who is stated to be 15 years old at time of incident.

Facts, as contained in the FIR are as follows:-

"....Respected Sir, I Rekha Veram, wife of Rakesh Kumar house No.1177/2, Morigate, Manimajra, Chandigarh wants to submit as under:- 1. That I have four daughters and one son. My younger daughter Vxxx who is aged about 15 years DOB 2006. 2. That the accused is my neighbourers and is doing tea vendor shop nearby house. 3. That the accused number times rape my daughter and also eve teasing and a C.D. is

also prepared which is attached in which it is clearly proved that the accused is committing rape with my daughter. 4. That now the accused is threatening to me and my daughter that if I disclose anything to the police against the accused Babu Lal then he will circulated the said video to the public and will spoil the life of my daughter. 5. That we have apprehension at the hands of accused and the life of me and my family members be saved. It is humbly prayed that strict action be taken against accused and FIR be registered under relevant section of law and life and liberty of me and my family members be protected at the hands of accused....”

3. It is inter alia submitted by learned counsel for the petitioner that the petitioner is 71 years old and has been in custody since 28.08.2021. It is submitted that the FIR was lodged on the complaint of mother of the prosecutrix. However, both the complainant as well as the prosecutrix have recorded their statements before the learned trial Court as PW2 and PW1 respectively wherein they have not supported the case of the prosecution. It is submitted that the petitioner has been falsely implicated in the present case. Even as per the MLR, there is no evidence against the petitioner. It is further submitted that at the time of alleged incident, age of the prosecutrix was 16 years 2 months, her date of birth being 27.06.2005 as per the school record. It is submitted that the dismissal of the petitioner's bail application by the learned Judge, Fast Track Special Court, Chandigarh vide order dated 08.08.2022 (Annexure P6) is incorrect.

4. Custody certificate filed by the respondent-UT is taken on record as per which the petitioner is in custody since 29.08.2021. Learned counsel for the respondent-UT submits that in her complaint, the complainant had stated that the petitioner had repeatedly raped her minor daughter aged 15 years and also used to eve-tease her daughter. The complainant had further stated that thereafter, the petitioner had threatened her and her minor daughter that in case they report the matter to the police, he would circulate and make viral an objectionable video of her daughter with him. It is submitted that on the basis of the said complaint, present FIR No.150 dated 28.08.2021 was registered.

5. It is stated that thereafter, statement of the victim was recorded under Section 164 Cr.P.C. on 28.08.2021 itself wherein she narrated and reiterated the entire facts as above, and also disclosed the involvement of one Geeta in the offence. On the basis of the statement of the victim, offence under Section 12 of POCSO Act was added to the FIR. Thereafter, upon identification by the victim, the petitioner and the co-accused Geeta w/o Virender were arrested on 28.09.2021.

6. Learned counsel further submits that as per school record of the victim, her date of birth is 27.06.2005 which clearly shows that at the time of registration of the FIR, the victim was a minor. It is submitted that thereafter, challan was presented before the learned trial Court on 26.10.2021; and charges were framed on 16.12.2021 under Sections 120-B, 376(3), 376(2)(n), 354-A and 506 IPC and Sections 6 and 12 of POCSO Act. Supplementary challan dated 16.09.2022 containing the

CD of the viral video clip along with the CFSL report was also presented before the learned trial Court.

7. Learned counsel refers to the statement of the victim as PW1 before the learned trial Court and submits that when the CD (Exhibit C/1) was played on a laptop in open Court, the victim had identified herself to be sitting on the chair and the old person in the video standing in front of the victim in partial naked condition, as the petitioner. It is submitted that accordingly, even though the prosecutrix and the complainant had turned hostile in the present case however, there was sufficient material with the prosecution against the accused persons to prove their case. Learned counsel also submits that co-accused Geeta has not been granted bail. It is further submitted that out of 19 witnesses, 10 have been examined and 1 has been given up.

8. I have heard learned counsel for the parties.

9. Keeping in view the totality of the facts and circumstances of the case and without commenting on the merits of the case, present petition is **dismissed**. However, it is made clear that nothing stated above shall be deemed as an expression of opinion on the merits of the case.

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

17.07.2023

Sunena

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No

(Nidhi Gupta)
Judge