

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-58809-2023 (O&M)

Date of Decision: 22.11.2023

AJAY KUMAR

.....PETITIONER

Vs.

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present: Mr. S.K. Choudhary, Advocate, for the petitioner.

HARPREET KAUR JEEWAN J. (ORAL)

[1] By this 2nd petition, filed under Section 438 of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C.'), the petitioner seeks the concession of 'pre-arrest bail' upon FIR No. 0075 having been registered at Police Station Laddowal, District Ludhiana, on 01.09.2023, alleging therein the commission of offences punishable under the provisions of Sections 363, 366-A and 376 of the IPC. Section 4 of the Protection of Children from Sexual Offence Act, 2012, has been later on added).

[2] *Inter alia* contends that the FIR was registered on 01.09.2023 at the instance of the father of the alleged victim who suffered a statement before the Magistrate on 03.10.2023 under Section 164 Cr.P.C. levelling allegations against her mother and there were no allegation by the victim against the petitioner. However, subsequently, when she was sent to '*Nari Niketan*' and was got released by the parents of the victim, she suffered another statement under Section 164 Cr.P.C. levelling allegations against the petitioner which is an afterthought and at the instance of the parents of the victim to falsely implicate the petitioner.

[3] It is further contended that the petitioner is a married person and having a daughter who is aged about 17 years and the allegations against the petitioner are totally false. The first petition was dismissed as withdrawn, vide order dated 08.11.2023 (Annexure P-4), with liberty to file a fresh as by that time the offence under Section 376 IPC and Section 4 of the Protection of Children from Sexual Offence Act, 2012, were added.

[4] Notice of motion.

[5] Having received advanced copy of the petition, Mr. Sarabjit Singh Cheema, D.A.G., Punjab, appears and accepts notice on behalf of the respondent-State.

[6] Learned State counsel, on instructions from ASI Kewal Singh, who is present in Court today to assist him, submitted that initially the FIR was registered on 01.09.2023 but the victim was sent to '*Nari Niketan*' by the Child Welfare Committee on 03.01.2023 as initially she was levelling some allegations against her mother. However, thereafter counselling of the minor victim was done by the Child Welfare Committee, when she came out from the '*Nari Niketan*' after about 06 days, she made a statement before the Magistrate with her free will and there are serious allegations against the petitioner which are further corroborated by the report of her medical examination which was conducted on 14.10.2023. During this period she was not under the influence of anyone. It was further contended that the report of the UCG pelvic and other medical tests are still awaited. Dismissal of the present petition was prayed for.

[7] I have considered the said contentions. It is not disputed that the victim is a minor. As per the statement of the victim (Annexure R-1)

recorded on 03.10.2022, the petitioner is a relative ('Masar') of the victim and she had gone to the house of the petitioner as her mother was forcing her to do wrong acts. However, in her subsequent statement recorded on 11.10.2023 (Annexure R-2) she has levelled serious allegations against the petitioner and his family members. The translation of Annexure R-2 is as under:-

“Statement under Section 164 Cr.P.C.

On SA

Stated that madam my hairs were cut. His wife has cut all my hairs. The boy hit me with scissor on my hand and at that time his daughter was accompanying him. His wife, mother-in-law and wife of his brother ('Bharjai') had cut her hairs. Her husband had done wrong act with me, videos were made and thereafter, they were telling me to depose against my mother otherwise they would viral my videos. After that they have also threatened me while sitting in the chamber of an Advocate and told me to give a statement in their favour. The father of the boy was also accompanying them. I was threatened to be killed. I was made to sleep by the wife of the person after giving me intoxicants.

*RO & AC
xxxx (victim)
sd/- Dr. Rajwinder Kaur
JMIC, Ludhiana,
dated 11.10.2023”*

[8] The alleged history of sexual harassment is recorded in the Medical Examination Report of the victim [which was conducted on 14.10.2023 (Annexure P-3)]. The investigation report of the vaginal swabs

and others investigation are still awaited. As per the contentions of the State counsel, the victim was sent to '*Nari Niketan*' by the Child Welfare Committee before her subsequent statement Annexure R-2 was recorded by the Magistrate under Section 164 Cr.P.C. *Inter se legality* of both the statements recorded under Section 164 Cr.P.C is a matter of trial. However, at this stage there are serious allegations of sexual assault of the victim, who is a minor. It is not a fit case for releasing the petitioner on bail under Section 438 Cr.P.C.

[8] Consequently, the present petition is dismissed.

[9] However, it is made clear that nothing observed hereinabove will be taken to be a comment on the actual merits of the case for or against the petitioner, which would be wholly gone into by the trial Court as per evidence gathered and led before the trial court.

[10] Pending miscellaneous application (s), if any, shall also stand disposed of.

November 22, 2023
nitin

(HARPREET KAUR JEEWAN)
JUDGE

Whether Speaking	Yes
Whether reportable	No