

2023:PHHC:166913

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-63655-2023
DECIDED ON: 22.12.2023

HARUN @ HAROON KHAN

...PETITIONER

VERSUS

STATE OF HARYANA

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Anirudh Singh Shera, Advocate, for the petitioner.

Mr. Sandeep Singh Mann, Addl. AG, Haryana.

SANDEEP MOUDGIL, J

1. The jurisdiction of this court under Section 439 of The Code of Criminal Procedure, 1973 has been invoked third time by the petitioner seeking regular bail in FIR No. 349 dated 14.09.2022 under Section 10 of POCSO Act and Section 342 of IPC registered at Police Station Ferozpur Jhirka, District Nuh, Haryana.

2. The brief facts of the case-in-hand are on 13.09.2022 at around 7:30 P.M. the petitioner called the minor nephew (mildly mentally weak) of the complainant to the Mosque where the petitioner committed an act of sexual assault with the minor child in the bathroom of the Mosque. Upon hearing noises, one person from village namely Munfed called and the two of them together went to see the matter. On their opening of the door, they saw that the petitioner Haroon is fully naked and ran away from the spot. However, the child

was properly dressed. This whole incident was captured by Sajid in his mobile. Thereafter, he showed this video to the complainant.

3. The learned counsel for the petitioner contends that the petitioner has been falsely implicated in this case, as the complainant cannot be said to be a material eye-witness as he was not present at the scene. The present FIR has been registered on the basis of a statement made to him by one Sajid and the video shown by him to the complainant. He further contends that the video lacks evidentiary value in the eyes of law and thus, no offence is made out as the petitioner cannot be seen doing anything wrong with the child.

4. He argues that as per the FSL report, dated 13.10.2022, there have been no signs of sexual assault on the child by the petitioner. This totally rules out the possibility of the involvement of the petitioner in playing any negative role towards the minor child. It is submitted on behalf of the petitioner that he has been undergoing the treatment of epilepsy/seizures/fits and therefor, he cannot commit any such offence. It has been further argued that PW-1 i.e., the minor child did not utter a single word in the questions put to him in his examination, and PW-2 (maternal uncle) also brought it to the notice of the court that he was not present at the spot. It has been pointed out that on 27.04.2023 PW-3 was declared hostile by the Court below as he did not support the prosecution story and PW-5 i.e., the father of the minor victim also gave a statement in favour of the petitioner.

5. Learned State counsel has vehemently opposed the present petition primarily on its maintainability urging that third petition is not maintainable, as there is no change in circumstances. On merits, he has contended that the child was wrongfully confined by the petitioner in the bathroom of the Mosque.

Noises could also be heard from inside the bathroom which led Munfed call

Sajid to check if there is any trouble. The act by these two men of capturing the incident was to only help the minor child and his family members to know what wrongful act was being committed upon the child by the petitioner. He further contends that it is clear from the video-clip that the petitioner was in a naked position with the child in the bathroom of the Mosque and ran away from the spot immediately, which is sufficient for this Court to infer that the petitioner has actively participated in commissioning offence, which is also an act of obscenity and affects the mental and physical well-being of the minor child thereby creating a negative and harmful impact on the mind, body and soul of the child and also injuring/damaging the same.

6. Heard learned counsel for the respective parties.

7. While considering matters involving sexual offences, a Court has to be considerate that the incidents of sexual violence against children in a society always involve the life and limb of a child as what is at stake is the prestige and future of the victim which has been lowered and shattered into pieces. Once a victim being a child has been hurt physically, emotionally, and mentally at a tender age, the same is bound to have adverse effects on the overall growth and development of the said human being for rest of his life. It is thus, in the interest of justice and of course the overall interest of society at large that proceedings are handled with due care and caution, especially when the Court is dealing with an application for releasing the accused on bail.

8. Further this court is of the view that while dealing with cases arising out of the POCSO Act, a Court is called upon to balance the “public cause” of the society at large against the “private interest/right”. Therefore, in

cases of grant of bail, it is required to take into consideration various factors namely:-

- i) The nature of the offence*
- ii) The heinousness of the crime*
- iii) The punishment involved*
- iv) Role of the accused*

9. The Court is also required to examine if there is a prima facie case made out against the accused or if there is a reasonable doubt created in the mind of the Court for granting bail to the accused. Therefore, in addition of the aforesaid conditions, a Court must be mindful of the purposes, objects, and reasons of the POCSO Act supplemental with the basic settled position enshrined in Section 438 of the CrPC and Section 439 of CrPC as held by the Supreme Court in various decisions.

10. In the case in hand, this court is of firm view that the petitioner is an accused of a serious crime that might have shaken the victim's consciousness and also to keep in mind the victim's age, who is minor and whose life is in jeopardy.

11 Even though as a discretionary remedy, the grant of bail must be exercised with judicious mind having due regard to the particular circumstances of each case. There cannot be any all-inclusive guidelines established for the evaluation of a bail request. However, it can be noted that;

(a) The type of charges, the seriousness of the punishment, whether a conviction is required, and the quality of the evidence supporting the accusations are all considerations for the court when deciding whether to issue bail;

(b) .When deciding whether to grant bail, the court should take into account realistic fears that the witnesses may be coerced or that the complainant may be in danger.

(c) While it is not accepted to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought to be always a prima facie satisfaction of the Court in support of the charge

(d) The prosecution's frivolity should always be taken into account; only the element of genuineness should be taken into account when determining whether to grant bail. If there is any reason to believe that the prosecution is not acting honestly, the accused is entitled to an order of bail in the normal course of events.

12. This court would also profitably refer to a decision of Apex Court in **“Kalyan Chandra Sarkar v. Rajesh Ranjan@Pappu Yadav and another”** (2004) 7 SCC 528 where the parameters to be taken into consideration for grant of bail by the Courts has been explained in the following words:

"11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind.

It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

- *The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.*
- *Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.*
- *Prima facie satisfaction of the court in support of the charge. (See Ram Govind Upadhyay v. Sudarshan Singh [(2002) 3 SCC 598:*

*2002 SCC (Cri) 688] and Pu-ran v. Rambilas [2001) 6 SCC 338 :
2001 SCC (Cri) 1124] .)"*

13. In view of the discussions and observations made hereinabove and in light of fact that allegations against the accused are serious in nature wherein Section 10 of the POCSO ACT, 2012 is involved which stipulates for rigorous imprisonment for a term which may extend to imprisonment for life and in addition the act committed by the accused person is against the morality and society at large, this court is not inclined to interfere.

11. Hence, the petition is hereby dismissed being devoid of merits.

22.12.2023
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(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No