

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-4329-2024
DECIDED ON: 05.02.2024

IRFAN

.....PETITIONER

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Krity Lohar, Advocate for
Mr. Akshay Kumar Dahiya, Advocate
for the petitioner.

Mr. Gurbir Singh Dhillon, AAG, Haryana.

SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this Court has been invoked under Section 439 Cr.P.C., seeking regular bail to the petitioner in FIR 536, dated 01.08.2021, under Sections 506/377/34 of IPC, 1860 and Section 6/10 of POCSO Act registered at Police Station Old Industrial Area, Panipat.

2. Factual matrix leading to the filing of present petition as stated to be as under:-

Complaint/ father of the victim gave a written complaint to the police station alleging that on 01.08.2021 when he was out from his home and his children were alone at home two boys namely Irfan and Soyab visited his house and took his son aged 9 years to guava garden and committed unnatural carnal intercourse with his son and even threatened to kill his son if he disclosed about the said incident to anyone.

3. Learned counsel for the petitioner contends that the petitioner has been falsely implicated in the present case due to previous enmity of the complainant with the petitioner's family. She further states that it as an admitted fact by the complainant that victim was not alone at home rather his two sisters were also present, but during investigation the sisters of the petitioner never mentioned that victim had been taken out of the home as alleged. She further Vehemently argues that no Test identification Parade was ever conducted and also that the petitioner is a man of clean antecedent who is not involved in any other case and thus prays for release of the petitioner on regular bail.

4. Learned state counsel on the other hand seeks dismissal of bail application on the ground that the allegation raised against the petitioner are heinous and grave in nature which needs to be dealt sternly. In addition, the petitioner has not disclosed the fact that earlioer also a regular bail petition bearing no.CRM-M-8611-2023 was filed before this court which was ordered to be dismissed as withdrawn.

5 Heard respective parties at length.

6. 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.

6. 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

7. 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.

8. In the case in hand, the court is firm to say 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 i.e 9-year whose life is in jeopardy.

9. 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.

11. 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 of-fence. 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 circum- stances, the following factors also before granting bail; they are:

- The nature of accusation and the severity of punishment in case of conviction ano 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] .)"*

12. 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 6 and 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.

05.02.2024

Meenu

**(SANDEEP MOUDGIL)
JUDGE**

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*