



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

204

CRM-M-13311-2024

Date of Decision: 22.05.2024

Deepak

.... Petitioner

Versus

State of Haryana

.... Respondent

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: - Mr. R.S. Mamli, Advocate for the petitioner.

Mr. Surinder Kumar Dagar, DAG, Haryana.

NIDHI GUPTA, J. (ORAL)

The petitioner has filed the present 1st petition under Section 439 of the Code of Criminal Procedure, 1973, for grant of regular bail in case FIR No. 21 dated 02.02.2023 (Annexure P-1) registered under Section 10 of the Prohibition of Child Marriage Act, 2006 (for short 'the Act') and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as 'the POCSO Act') (Sections 376(3) and 376(2)(n) IPC were added subsequently) at Police Station Nigdhu, Karnal.

The aforesaid FIR was registered on the basis of statement of the victim herself and the brief facts as mentioned in para No. 3 of the impugned order dated 11.01.2024 (Annexure P-4), are reproduced as under:-

"3. Prosecution case is that on 2.2.2023, a zero FIR No.188



dated 2.2.2023 under section 6 POCSO Act and 10 of Prohibition of Child Marriage Act registered in P.S.Civil Line, Karnal was received in police station Nigdhu, wherein it was alleged by victim 'S', 14 (name withheld and to be referred to as 'S' or complainant/victim hereinafter) that three months ago, her father Madan Lal solemnized her marriage with Deepak resident of Kaithal and now she is pregnant. For the last three days, she was in orphanage home at Phoosgarh, Karnal. Today, due to her critical condition, she was taken to Government Hospital by Seema Madam and Sonia Madam. Thereafter, present FIR under section 6 POCSO Act and 10 of Prohibition of Child Marriage Act was registered at P.S.Nigdhu. Matter was investigated. Victim was medically examined. On 5.2.2023, her pregnancy was terminated. Her birth certificate and photographs of her marriage were taken into police possession. On 20.2.2023, her statement under section 164 Cr.P.C was recorded. She was counselled. On 23.2.2023, sealed parcels relating to victim handed over by doctor were sent to FSL for analysis. On 8.4.2023, accused Deepak was arrested. He was medically examined. His disclosure statement was recorded. On 25.4.2023, accused Madan Lal was arrested. His disclosure statement was recorded. After completion of investigation, challan qua accused Madan Lal and Deepak was prepared and submitted in the court for trial."

Learned counsel for the petitioner, *inter alia*, submits that in the present case a zero FIR was registered. Admittedly, the petitioner was married to the victim on 23.12.2022. The victim was impregnated by the petitioner and when she had gone to the hospital for check-up; whereupon it was discovered that she was minor and in this backdrop,



zero FIR was registered on the basis of the statement of the victim herself.

It is submitted that at the time of marriage, the petitioner was not aware of the fact that the victim was only 15 years old. It is submitted that from the perusal of the statement of the victim recorded under Section 164 Cr.P.C. (reproduced at page 3 of the paper-book), as also from the testimony of the victim before the learned trial Court as PW-1 (Annexure P-5), it is evident that the petitioner had solemnized marriage with the victim. Accordingly, no offence under Section 6 of the POCSO Act is made out, as the marriage of the victim with the petitioner was solemnized by her father and at that point of time, the petitioner did not know that the victim was minor. It is further submitted that the marriage is subsisting till today and no divorce petition has been filed.

Learned counsel submits that the only offence made out against the petitioner is under Section 10 of the Act. Furthermore, it is submitted that the petitioner has been in custody since the date of his arrest i.e. 08.04.2023 almost for over 01 year. The trial will take considerable time to conclude. Thus, it is prayed that the petitioner be released on regular bail.

Per Contra, learned counsel for the State vehemently opposes the prayer for grant of regular bail to the petitioner and submits that according to the petitioner the date of marriage is 23.12.2022, on which date the victim was 15 years of age; whereas as per statement of the victim recorded under Section 164 Cr.P.C. (Annexure R-II), the marriage was solemnized in the year 2019. It is submitted that as such, on



the date of marriage, the victim was less than 12 years of age. It is further submitted that father of the victim is also an accused in the present case, however, he has been enlarged on bail.

Learned counsel for the State has filed custody certificate dated 21.05.2024, which is taken on record, as per which the petitioner has been in custody as an undertrial for a period of 01 year, 01 month and 13 days. As per custody certificate, there is no other case against the petitioner. On instructions from SI Satyawan, learned counsel for the State informs that challan in the present case was presented on 05.06.2023 and the charges were framed on 18.09.2023; and out of total 18 prosecution witnesses, 02 witnesses have been examined, so far including the victim and the Superintendent of Bal Ashram, where the victim is housed currently.

Having heard learned counsel for the parties, but without commenting on merits of the case, however, keeping in view the totality of the facts and circumstances of the case; including the custody period of 01 year, 01 month and 13 days undergone by the petitioner as an undertrial, and perusal of the custody certificate reveals that there is no other case against the petitioner; and the fact that out of total 18 prosecution witnesses, only 02 material witnesses i.e. the victim and the Superintendent of Bal Ashram, have been examined, so far, therefore, conclusion of trial will take considerable time, and no useful purpose would be served by further detention of the petitioner. Thus, the present petition is **allowed**.

The petitioner-Deepak S/o Shri Sai Dass @ Sai Ram is



ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Chief Judicial Magistrate/Duty Magistrate, concerned.

However, it is made clear that nothing stated above shall be construed as an expression of opinion on the merits of the case.

22.05.2024
rishu

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No