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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM-M-13122-2024 (O&M)
Date of Decision : 22.03.2024

Deepak Kumar @ Deepu

....Petitioner

VERSUS

State of Punjab

....Respondent

CORAM : HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Bikramjeet Singh Jatana, Advocate for the petitioner.

Mr. Arjun Sheoran, DAG Punjab.

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SUDEEPTI SHARMA, J. (Oral)

1. This is the third petition filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to the petitioner in FIR No.237 dated 03.12.2022 under Sections 363 and 366 of the Indian Penal Code, 1860 (Sections 376 and 120-B IPC added later) and Section 3, 4 of the Protection of Children from Sexual Offences Act, 2012 (added later on) registered at Police Station City Budhlada, District Mansa.

2. Learned counsel for the petitioner contends that the petitioner is not named in the FIR and the main accused namely Gurlal Singh has been granted bail by a co-ordinate Bench of this Court vide order dated 06.03.2024. He further contends that the victim as well as complainant, both have turned hostile and their testimonies are placed on record with this petition as Annexures P-3 and P-4.

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3. Learned counsel for the State vehemently opposed the grant of bail to the petitioner on the ground that the victim was 13 years of age at the time of the incidence and the petitioner was named in the statement of prosecutrix recorded under Section 164 Cr.P.C.

4. I have heard the learned counsel for the parties and perused the whole record.

5. A perusal of the statement of victim shows that the role of the petitioner was only to drop and pick-up the victim and the main accused. Relevant portion of the statement of the victim is reproduced as under:-

“My date of birth is 03.05.2009. Copy of my school leaving certificate is Ex.PW1/A. My mother and father had got divorce, due to which I started residing with my mother Sandeep Kaur. My mother arranged second marriage with Tarsem Singh R/o Borawal and thereafter, I and my mother started residing at Village Borawal. After some time, we started residing at Budhlada. Last year, when I was studying in 7th standard at village Borwal, I left my house after picking a quarrel with my mother, therefore, I went village Dhillwan near Tapa, District Barnala in the house of my paternal aunt (Bhua), without telling my mother. I do not know accused persons present in the Court. I have never suffered statement against them before the police. They had never committed any wrong act with me.”

6. Relevant portion of the statement of complainant-Sandeep Kaur (mother of the victim) is reproduced as under:-

“ At the time of occurrence, we had been residing at Ward no.19, near Boys School, Budhlada, where a dispute had arisen in between

me and my husband Jaspal Singh, due to which I got divorced from my husband Jaspal Singh with the intervention of Panchayat of village Panjguriae. My husband Jaspal Singh had been residing at Village Panjguriae, District Faridkot. After divorce, I got arranged second marriage with Tarsem Singh resident of Village Borawal. At that time, I had only one child i.e. victim and I took victim with me in the house of my husband Tarsem Singh. My daughter/ victim was studying at Government School, Borawal. Nothing had happened with my daughter/ victim. I do not want to say anything with regard to this case. I do not know anything with regard to the facts of this case. I do not know accused Gurlal Singh and Deepak Kumar. I have never suffered any statement to the police with regard to the present case.”

7. Hon’ble Supreme Court in the case of **Dataram Singh Vs. State of Uttar Pradesh and Another** [2018 SCC On Line 88] has held as under:-

“4. While so introspecting, among the factors that need to be considered is whether the accused was arrested during investigations when that person perhaps has the best opportunity to tamper with the evidence or influence witnesses. If the investigating officer does not find it necessary to arrest an accused person during investigations, a strong case should be made out for placing that person in judicial custody after a charge sheet is filed. Similarly, it is important to ascertain whether the accused was participating in the investigations to the satisfaction of the investigating officer and was not absconding or not appearing when required by the investigating officer. Surely, if an accused is not hiding from the investigating officer or is hiding due

to some genuine and expressed fear of being victimised, it would be a factor that a judge would need to consider in an appropriate case. It is also necessary for the judge to consider whether the accused is a first-time offender or has been accused of other offences and if so, the nature of such offences and his or her general conduct. The poverty or the deemed indigent status of an accused is also an extremely important factor and even Parliament has taken notice of it by incorporating an Explanation to section 436 of the Code of Criminal Procedure, 1973. An equally soft approach to incarceration has been taken by Parliament by inserting section 436A in the Code of Criminal Procedure, 1973.

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7. However, we should not be understood to mean that bail should be granted in every case. The grant or refusal of bail is entirely within the discretion of the judge hearing the matter and though that discretion is unfettered, it must be exercised judiciously and in a humane manner and compassionately. Also, conditions for the grant of bail ought not to be so strict as to be incapable of compliance, thereby making the grant of bail illusory. present appeal, in which the grant.”

8. High Court of Karnataka in Criminal Petition No. 13469 of 2023 (482) **G. Raghu Varma vs. The State of Karnataka and another**, decided on **19.02.2024**, in para 7 has been held as under:-

"7. The object of POCSO Act is to protect minors from sexual abuse and not to criminalize the consensual relationship between two adolescents who had consensual sexual intercourse without knowing the consequences. The petitioner and the survivor come from the lower socio economic segment having limited access to information and knowledge, thus depriving them about the consequences in having consensual sexual intercourse. Though having sexual intercourse consensually with the minor is an offence under the POCSO Act, however, having regard to the facts and circumstances of the case, to secure the ends of justice, it would be appropriate to quash the impugned proceedings, otherwise, it would result in miscarriage of justice to the survivor and the child."

9. In view of the above and without commenting on the merits of the case and keeping in view the above facts and also the fact that conclusion of the trial is likely to take some time as well as the fact that the main accused namely Gurlal Singh has been granted bail by a co-ordinate Bench of this Court vide order dated 06.03.2024, therefore on the ground of parity, I deem it to be a fit case to grant the concession of regular bail to the petitioner. Petitioner Deepak Kumar @ Deepu S/o Jugal Kishore, is ordered to be released on regular bail on his furnishing bail bonds/surety bonds to the satisfaction of the Trial Court/Chief Judicial Magistrate /Duty Magistrate, concerned.

9. However, the Prosecution will always be at liberty to apply for cancellation of bail in case the petitioner is found to be misusing the concession of bail in any manner.

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10. It is also made clear that any observation made herein above shall not be construed as an expression of opinion on the merits of the case.
11. Disposed of. Pending applications, if any, also stand disposed of.

March 22, 2024
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(SUDEEPTI SHARMA)
JUDGE

Whether speaking/non-speaking : Speaking

Whether reportable : Yes/No