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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-15413-2024 (O&M)
Date of decision: 04.04.2024

SAURABH

...PETITIONER

V/S

STATE OF HARYANA

...RESPONDENT

CORAM: HON’BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Ram Bilas Gupta, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG Haryana.

HARPREET SINGH BRAR J. (ORAL)

1. This is the first petition filed under Section 439 of Cr.P.C. seeking grant of regular bail to the petitioner in the case bearing FIR No. 108 dated 25.08.2022 registered under Sections 8 of POCSO Act, at Police Station Women Ballabgarh, Faridabad.
2. The brief facts of the prosecution case are that on 25.08.2022, the prosecutrix 'J' (name withheld to protect the identity of prosecutrix) accompanied by her father made a statement in the presence of the legal aid counsel to the effect that, she is aged 15 years and studying in S.R.C. School. On 22.8.2022 at about 3.15 p.m. she was returning home after the school got closed, along with her friends 'R' and 'S' (name withheld to protect the identity of prosecutrix). When she reached near Peer Baba Ka Mandir, two boys were standing there. One of the boys caught her hand and touched her breast. She went home after freeing her hand. She did not tell anybody due to fear. On 25.08.2022 at about 3.20 pm, when she was returning home from school. Then in front of Deepak Medical Store, the same two boys were sitting. Her friend 'R' was also along with her. The petitioner-accused told her that there is huge difference between the earlier school going girls and current school going girls.

On these set of allegations, FIR(supra) was registered.

3. Learned counsel for the petitioner *inter alia* contends that petitioner is behind the bars since 26.09.2022 and maximum punishment provided under Section 8 of POCSO Act is upto 05 years. He further contends that the victim has already been examined before the learned trial Court and age of the victim has not been determined by the trial Court in accordance with law to make the petitioner liable for an offence under the POCSO Act. The trial of the case is likely to take long time to conclude.

4. Per contra, learned State counsel opposes the prayer for grant of regular bail to the petitioner on the ground that he is main accused and is involved in one more FIR under the POCSO Act.

5. Having heard the learned counsel for the parties and after perusing the record, it transpires that petitioner has been in custody since 26.09.2022 and out of 16 prosecution witnesses, only victim has been examined so far. As such, the trial of the case is likely to take long time to conclude. So further incarceration of the petitioner without there being the prospect of the conclusion of the trial in the near future, would be violative of Article 21 of the Constitution of India. Culpability, if any, would be determined at the time of the trial.

6. In view of the ratio of law laid down by Hon'ble Supreme Court in ***Prabhakar Tiwari Vs. State of UP and Anr.*** 2020(1) RCR (Criminal) 831 and ***Maulana Mohd. Amir Rashadi Vs. State of U.P. and Others*** 2012(2) SCC 382, the involvement of accused in other criminal cases cannot be the sole ground to deny him the concession of bail.

7. Accordingly, the present petition is allowed. The petitioner-Saurabh is ordered to be released on regular bail, subject to his furnishing bail bonds/surety bonds to the satisfaction of CJM/Duty Magistrate concerned.

8. Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and the trial Court shall proceed without being prejudiced by observations of this Court.

April 04, 2024

Ajay Goswami

(HARPREET SINGH BRAR)

JUDGE

(i) Whether speaking/reasoned

Yes/No

(ii) Whether reportable

Yes/No