

CRM-M-16896-2024 (O&M)
CRM-M-18222-2024

2024:PHHC:054950
2024:PHHC:054951

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 23.04.2024

- 1. CRM-M-16896-2024 (O&M)
- 2. CRM-M-18222-2024

Naveen Kumar alias BilluPetitioner

Versus

State of Haryana and another ...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Rakesh Nehra, Sr. Advocate with
Mr. Ravinder Malik, Advocate and
Mr. Garvit Malik, Advocate
for the petitioner.

Mr. Gaurav Bansal, DAG, Haryana.

Mr. Satyaveer Singh, Advocate and
Mr. Ashish Pundir, Advocate
for respondent No.2.

PANKAJ JAIN, J. (ORAL)

CRM-17555-2024 in
CRM-M-16896-2024

This is an application for placing on record documents marked
as Annexures R2/1 to R2/4.

For the reasons recorded in the application, the same is allowed.

Documents marked as Annexures R2/1 to R2/4 are taken on record subject
to all just exceptions.

CRM-M-16896-2024 & CRM-M-18222-2024

These two petitions under Section 438 Cr.P.C. have been filed at the behest of petitioner Naveen Kumar @ Billu, seeking pre-arrest in the following two FIRs :

FIR No.	Dated	Sections	Police Station	District
35	24.01.2024	323, 34, 363, 506 IPC and Section 6 of POCSO Act	Nissing	Karnal
38	25.01.2024	323, 34, 363, 506 IPC and Section 6 of POCSO Act	Nissing	Karnal

2. Contents of FIR No.35 *ibid* reads as under:

“xxx It is requested that I am Ravi son of Satvir caste Rajput resident of village Gonder is a truck driver. Today on 24.01.2024 at about 1 PM noon, Naveen @ Billu son of Mahavir alongwith his uncle son Ajay Fauzi forcibly picked up Bharat who is the son of my uncle(Chacha) namely Surjeet @ Kala from front of their house in his black scorpio jeep bearing No.HR-05AX0045. They took away the son of my uncle to the tubewell in their fields on Gullarpur road. They started entering their pennies in the mouth of Bharat after putting off their clothes, when Bharat refused to do so, then Billu brought the revolver from his jeep and placed the revolver on the temple of Bharat and tried to commit unnatural sex with Bharat. They made Bharat naked and made a video and both, after consulting each other, did not leave any place on Bharat's body that was not injured and after that Naveen and Ajay threw my uncle's sons Bharat in almost dead condition, from his car on the bank of river on the canal track bridge and while leaving he threatened that he is save today and they will kill him in future.

When I was coming from my farm and I saw Bharat in an unconscious state, after that I called my uncle. We took Bharat home, since his condition was very bad, we took him to the government hospital in Nissing. When he regained consciousness, Bharat narrated his story, after which he again became unconscious due to which he was referred to Kalpana Chawla, Karnal. Naveen Rana alias Billu S/O Mahavir also has illegal weapons, hence you are requested to take legal action against the above two culprits xxx.”

3. Contents of FIR No.38 *ibid* reads as under:

“xxx It is requested that I am Monu son of Om Prakash caste Rajput resident of village Gonder near Ground's Well. On Dated 23.01.2024 at about 10 PM night, Billu @Naveen son of Mahavir son of Brijpal caste Rajput resident of street near Ground's Well, Village Gonder forcibly picked up my son Kartik aged 15 years took him in car to his fields on Gullarpur road, beat up my son, removed all his clothes and tried to rape him and above said Billu held him and Ajay urinated in my son's mouth and told him not to tell anyone and gave him electric shock and he was threatened due to which my son is in a bad condition, he is referred to Karnal. He is in a bad condition and is referred to Karnal. My son did not tell us for many days because they had threatened to him. When his condition got better, then my son told us that we are in danger of our lives from all of them. Please take action against them.”

4. Ld. Senior counsel representing the petitioner has invited attention of this Court to Annexure P-3 (in CRM-M-18222-2024) i.e. FIR No.0044 dated 29th of January, 2024 registered at Police Station Nissing, District Karnal to submit that family of the accused lodged FIR against the victims in the FIR in which the petitioner seeks pre-arrest bail. In fact, it is a

case of false implication wherein firstly child belonging to the family of the petitioner was victimized and thereafter the petitioner is being falsely implicated in order to evade their criminal liability. Ld. Senior Counsel further submits that from the bare allegations levelled in the FIRs it is evident that the allegations would not constitute offence punishable under Section 6 of the POCSO Act, 2012 as the provision of Section 6 would be attracted only on commission of offence and not merely on attempt thereof.

5. Counsel appearing for respondent No.2 has placed on record certain photographs (in CRM-M No.16896 of 2024) to show electrocution and the injuries suffered by the victim.

6. I have heard counsel for the parties and have carefully gone through records of the case.

7. So far as the plea raised by Senior Counsel w.r.t. false implication of the petitioner is concerned, the same stands falsified from the contents of the FIR. When FIRs No.35 and 38 are read *viz-a-viz* FIR No.44, the same evidently shows that in fact information on the basis of which FIR No.44 was registered, was given in police station much later after the FIRs No.35 and 38 came into being.

8. Coming on to the legal plea raised by Ld. Senior Counsel, the argument raised is misconceived. Section 6, the charging Section prescribes ‘punishment for aggravated penetrative sexual assault’. Section 3 defines ‘penetrative sexual assault’. Aggravated penetrative sexual assault has been defined under Section 5 of the 2012 Act. The same read as under:

3. Penetrative sexual assault.—A person is said to commit “penetrative sexual assault” if—

(a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or

(b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or

(c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body of the child or makes the child to do so with him or any other person; or

(d) he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person.

5. Aggravated penetrative sexual assault.—(a) Whoever, being a police officer, commits penetrative sexual assault on a child —

(i) within the limits of the police station or premises at which he is appointed; or

(ii) in the premises of any station house, whether or not situated in the police station, to which he is appointed; or

(iii) in the course of his duties or otherwise; or

(iv) where he is known as, or identified as, a police officer; or

(b) whoever being a member of the armed forces or security forces commits penetrative sexual assault on a child—

(i) within the limits of the area to which the person is deployed; or

(ii) in any areas under the command of the forces or armed forces; or

(iii) in the course of his duties or otherwise; or

(iv) where the said person is known or identified as a member of the security or armed forces; or

(c) whoever being a public servant commits penetrative sexual assault on a child; or

(d) whoever being on the management or on the staff of a jail, remand home, protection home, observation home, or other place of custody or care and protection established by or under any law for the time being in force, commits penetrative sexual assault on a child, being inmate of such jail, remand home, protection home, observation home, or other place of custody or care and protection; or

(e) whoever being on the management or staff of a hospital, whether Government or private, commits penetrative sexual assault on a child in that hospital; or

(f) whoever being on the management or staff of an educational institution or religious institution, commits penetrative sexual assault on a child in that institution; or

(g) whoever commits gang penetrative sexual assault on a child.

Explanation.—When a child is subjected to sexual assault by one or more persons of a group in furtherance of their common intention, each of such persons shall be deemed to have committed gang penetrative sexual assault within the meaning of this clause and each of such person shall be liable for that act in the same manner as if it were done by him alone; or

(h) whoever commits penetrative sexual assault on a child using deadly weapons, fire, heated substance or corrosive substance; or

(i) whoever commits penetrative sexual assault causing grievous hurt or causing bodily harm and injury or injury to the sexual organs of the child; or

(j) whoever commits penetrative sexual assault on a child, which—

(i) physically incapacitates the child or causes the child to become mentally ill as defined under clause (l) of section 2 of the Mental Health Act, 1987 (14 of 1987) or causes

impairment of any kind so as to render the child unable to perform regular tasks, temporarily or permanently; 1***

(ii) in the case of female child, makes the child pregnant as a consequence of sexual assault;

(iii) inflicts the child with Human Immunodeficiency Virus or any other life threatening disease or Infection which may either temporarily or permanently impair the child by rendering him physically incapacitated, or mentally ill to perform regular tasks; 1***

2 [(iv) causes death of the child; or]

(k) whoever, taking advantage of a child's mental or physical disability, commits penetrative sexual assault on the child; or

(l) whoever commits penetrative sexual assault on the child more than once or repeatedly; or

(m) whoever commits penetrative sexual assault on a child below twelve years; or

(n) whoever being a relative of the child through blood or adoption or marriage or guardianship or in foster care or having a domestic relationship with a parent of the child or who is living in the same or shared household with the child, commits penetrative sexual assault on such child; or

(o) whoever being, in the ownership, or management, or staff, of any institution providing services to the child, commits penetrative sexual assault on the child; or

(p) whoever being in a position of trust or authority of a child commits penetrative sexual assault on the child in an institution or home of the child or anywhere else; or

(q) whoever commits penetrative sexual assault on a child knowing the child is pregnant; or

(r) whoever commits penetrative sexual assault on a child and attempts to murder the child; or

(s) whoever commits penetrative sexual assault on a child in the course of 1 [communal or sectarian violence or during any natural calamity or in similar situations]; or

(t) whoever commits penetrative sexual assault on a child and who has been previously convicted of having committed any offence under this Act or any sexual offence punishable under any other law for the time being in force; or

(u) whoever commits penetrative sexual assault on a child and makes the child to strip or parade naked in public, is said to commit aggravated penetrative sexual assault.

9. The contents of the FIR when read in the light of the aforesaid provision, this Court is unable to accept the plea raised by Senior Counsel that the allegations levelled do not constitute offence punishable under Section 6 of the 2012 Act..

10. Faced with the situation, Ld. Senior Counsel has relied upon the statement of the victim recorded under Section 164 Cr.P.C. in FIR No.44 dated 29th of January, 2024.

11. In the considered opinion of this Court, the allegations levelled in the FIR No.44 will have their own consequences. The statement recorded by the victim in FIR No.44 may be utilized to in trial arising out of the said FIR. It can't be co-related to the allegation levelled in the instant FIR to give clean chit to the present petitioner at this stage. This argument sans merit and is thus rejected.

12. Keeping in view the allegations levelled and the seriousness of the offence, this Court does not find any reason to grant discretionary relief of pre-arrest bail to the present petitioner. Resultantly, the instant petitions are hereby dismissed.

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13. Needless to say that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.
14. A copy of this order be kept on the file of other connected case.

April 23, 2024		(Pankaj Jain)
Dpr		Judge
Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No