

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

220

CRM-16883-2024 in/and
CRM-M-19268-2024
Date of decision: 09.05.2024

CHIN MAY MAHATO

...Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present : Mr. S.S. Sandhawalia, Advocate
for the petitioner.

HARPREET KAUR JEEWAN, J.

CRM-16883-2024

1. Allowed as prayed for.

Main case

1. The present petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case bearing FIR No.404 dated 29.12.2023 (Annexure P-1) under Sections 354-A of the IPC and Section 10 of the POCSO Act, 2012 registered at Police Station Rai, District Sonipat.
2. Notice of motion.
3. On the asking of the Court, Mr. Kirpal Singh Thakur, AAG, Haryana accepts notice on behalf of the respondent-State.
4. Custody certificate dated 07.05.2024 has been filed on behalf of the respondent-State, which is taken on record. As per the custody certificate, the

petitioner has undergone 04 months and 09 days of actual custody.

5. Reply by way of an affidavit of Mukesh Kumar, HPS, Assistant Commissioner of Police, Rai, Sonipat along with certificate issued by Principal, the Modern School (Annexure R-1) and statement of the complainant under Section 164 Cr.P.C. (Annexure R-2) have been filed on behalf of the respondent-State, which are taken on record.

6. As per the prosecution case, the present FIR was registered at the instance of the complainant on the ground that the petitioner has outraged the modesty of her daughter (who is a minor).

7. Learned counsel for the petitioner *inter alia* contends that the petitioner has been falsely implicated in this case and he is in custody since 29.12.2023 as under-trial. Statement of the prosecutrix has been recorded during the trial and copy of the said statement is submitted in the Court today, which is taken on record. He further contends that the alleged occurrence took place in isolation but the place of occurrence is alleged to be Yoga class where other students were also present. The petitioner is 45 years of age and ready to face trial. The petitioner is in custody for 04 months and 09 days. The statement of the Child Victim under Section 164 Cr.P.C. was not recorded. Even in the complaint moved by the father of the prosecutrix, which was addressed to the SHO, Police Station Rai, Sonipat, it was mentioned that FIR may not be registered despite that criminal proceedings were initiated against the petitioner. Copy of the original complaint written by the complainant to SHO, Police Station Rai, Sonipat is submitted in the Court today and the same is taken on record. He submits that this fact is also mentioned in the status report that complainant (father of the victim) does not

want to get recorded the statement of his daughter nor does he want medico-legal examination, however the present FIR was registered under Sections 354-A of the IPC and Section 10 of the POCSO Act, 2012. During the investigation, the guardians of the Child Victim were approached and persuaded for medico-legal examination of the Child Victim as well as for recording her statement under Section 164 Cr.P.C but they refused for the same. He further submits that investigation is complete and final report under Section 173 Cr.P.C. has been presented before the trial Court. The trial is going to take time to conclude, as such, prayer for releasing the petitioner on bail has been made.

8. On the other hand, learned State counsel on instructions from ASI Reena has informed that investigation is complete and final report under Section 173 Cr.P.C. has been presented before the trial Court. As per custody certificate, there is no history of other cases against the petitioner.

9. I have considered the aforesaid contentions. Investigation is complete and the final report under Section 173 of the Code of Criminal Procedure has been presented before the trial Court. The age of the Child Victim is 9 years at the time of recording of her statement, however in the cross-examination, Child Victim has stated that yoga teacher used to teach yoga to other students of class generally by touching the children inappropriately. The petitioner is in custody since 29.12.2023 as an under-trial. There are total 19 witnesses, out of which only 1 witness has been recorded, as such conclusion of the trial will take time. There is no apprehension absconding of the petitioner. The petitioner is in custody for 04 months and 09 days. As per custody certificate, there is no history of other cases against the petitioner.

10. In view of the above, the petition is allowed. The petitioner is ordered to be released on regular bail, subject to his furnishing adequate bail bonds and surety bonds to the satisfaction of the trial Court/Duty Magistrate concerned.
11. However, it is made clear that nothing expressed hereinabove would be construed to be an expression of opinion on merits of the case.
12. Pending miscellaneous application (s), if any, shall also stand disposed of.

(HARPREET KAUR JEEWAN)
JUDGE

09.05.2024
P.Bhatt

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No