

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

205

CRM-M-20760-2024

Date of Decision: 02.05.2024

Yogesh @ Vishu

.... Petitioner

Versus

State of Haryana

.... Respondent

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: - Mr. Jaskaran Singh, Advocate for the petitioner.

Mr. Surinder Kumar Dagar, DAG, Haryana.

NIDHI GUPTA, J. (ORAL)

The petitioner has filed the present 2nd petition under Section 439 of the Code of Criminal Procedure, 1973, for grant of regular bail in case FIR No. 173 dated 21.06.2023 (Annexure P-1) registered under Sections 363 and 366-A IPC and Section 4 of the Protection of Children from Sexual Offences Act, 2012, (for short- 'the POCSO Act') at Police Station Rampura, Rewari.

The aforesaid FIR was registered on the basis of complaint moved by the father of the victim, which is reproduced as under:-

".....To the SHO Rampura, District Rewari. Sir, it is requested that I Mahesh S/o Rajkumer village Jadra, Rewari. I am a labourer and is a daily wage earner. I have two kinds. My elder boy namely Puneet and a girl child namely xxxx who studies in class 10th in G.S.S.S., Jadra whose D.O.B. is 08/01/2008. My daughter left the home on 20/06/2023 at around 2:00 PM without informing anyone. I have inquired about my daughter from all relatives and still I've got no clue where she is. She is 5ft2 inches tall, whitish coloured, round faced wearing white top with black lower and slippers. It is anticipated that someone had lured my

daughter and kidnapped her. Please find her. I have submitted the complaint myself on 21/06/2023.....”

Learned counsel for the petitioner, *inter alia*, submits that petitioner is the son of victim's cousin aunt and has been embroiled in the present case only for some wrongful gains. It is submitted that the petitioner and the victim were in a consensual relationship and this is evident from the statement of the victim dated 02.07.2023 (Annexure P-3) recorded under Section 164 Cr.P.C., wherein she has categorically stated that she had left with the petitioner as per her will and consent; and that she loves the petitioner. Even in her statement dated 21.06.2023 (Annexure P-4) recorded under Section 161 Cr.P.C., the victim has not supported the case of the prosecution. Further, it is submitted that FSL Report (Annexure P-5) is also negative, as no semen was detected. Learned counsel for the petitioner further points out that the victim in her statement recorded under Section 164 Cr.P.C., had admitted her physical relations with the petitioner. The petitioner has been in custody since 01.07.2023. The trial is likely to take a long time to conclude. No useful purpose would be served by further detention of the petitioner in custody. Thus, it is prayed that 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 date of birth of the victim is 08.01.2008 and date of occurrence is 20.06.2023. Therefore, it is submitted that at the time of alleged occurrence, the victim was a minor girl of 15 years and 05 months of age, and under the provisions of POCSO Act, any alleged consent of victim is

immaterial. It is further submitted that aforesaid FIR was registered on 21.06.2023 and the victim was recovered/produced by the uncle of the petitioner on 01.07.2023 and her medico-legal examination was conducted on 02.07.2023.

Learned counsel for the State has filed custody certificate dated 30.04.2024, which is taken on record, as per which the petitioner has been in custody as an undertrial for a period of 09 months and 27 days. As per custody certificate, there is no other case against the petitioner. On instructions from L/ASI Mamta, learned counsel for the State informs that out of total 26 prosecution witnesses, 05 formal witnesses have been examined by the learned trial Court so far. The complainant and victim are yet to be examined by the learned trial Court.

At this stage, reference may be made to a recent judgment of High Court of Karnataka in **Criminal Petition No. 13469 of 2023 (482) G. Raghu Varma vs. State of Karnataka and others, decided on 19.02.2024, Law Finder Doc ID # 2506169**, wherein in para 7, it has been held as follows:-

“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.”

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 undergone by the petitioner and perusal of the custody certificate reveals that there is no other case against the petitioner; and also the fact that conclusion of trial will take considerable time as out of total 26 prosecution witnesses only 05 have been examined so far, and no useful purpose would be served by further detention of the petitioner. Thus, the present petition is **allowed**.

The petitioner-Yogesh @ Vishu S/o Sunder Singh, 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.

02.05.2024
rishu

(NIDHI GUPTA)
JUDGE

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