



CRM-M-26796-2023 (O&M)
Date of decision: 20.09.2024

...PETITIONER

V/S

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Mr. Sandeep Kumar, DAG Punjab.

Mr. Sunny Singla, Advocate
for the complainant.

HARPREET SINGH BRAR J. (ORAL)

CRM-24038-2023

This is an application under Rule 3-A(i) of Chapter 6, Rule-B, Volume-V of Punjab and Haryana High Court Rules and Orders praying for exemption and leave to file the accompanying main petition notwithstanding the absence of the name of the undersigned Counsel in the ‘Roll of Advocates’ prepared by this Hon’ble Court.

For the reasons mentioned in the application same is allowed and necessary exemption is granted subject to all just exceptions.

CRM-M-26796-2023

1. This is the first petition filed under Section 439 of Cr.P.C. seeking grant of regular bail to the petitioner in case bearing FIR No. 423 dated 09.10.2022 registered under Section 376 of Indian Penal Code, Section 4 of Protection of Children from Sexual Offences Act, 2012 and Section 67-B of Information Technology Act, 2000 (later on added Sections 376(3), 342, 450, 500 of Indian Penal Code and Section 6 of POCSO Act and later deleted



Section 4 of POCSO Act) at Police Station Zirakpur, District SAS Nagar (Mohali).

2. The FIR(supra) was lodged at the instance of complainant Poonam Kumari wherein it has been stated that she is a housewife and since February 2021, she has been living with her family at Flat No. 101, SBP, Gateway of Dreams, Patiala road, Zirakpur. Sh. Pardeep Sharma alongwith his son Akash Sharma (petitioner/accused herein) and his daughter Monu Sharma have also shifted to Flat No.202, Gateway of Dreams, Patiala road, Zirakpur. Both the families have cordial relationship with each other and used to come to the house of each other. In December 2021- January 2022, petitioner-accused Akash Sharma and complainant's daughter (name withheld to protect his identity and hereinafter referred to as victim), aged about 15 years started talking with each other. The petitioner asked her daughter to install Snapchat on her mobile phone and on his asking, the prosecutrix has made a new snapchat ID Minipotter 2007 and started talking with the petitioner on his Snapchat Id akashsharma448. It is further alleged that the petitioner has trapped her minor daughter in his sweet talks and asked her to send her photographs. When her daughter denied for the same, the petitioner has started blackmailing her and threatened her to disclose about their relationship to her family. Due to fear, the prosecutrix had sent her photographs to the petitioner and he has started blackmailing her. The petitioner has also taken password of snapchat Id of the prosecutrix. In their absence, the petitioner used to come to their house and due to which the prosecutrix remained stressed. On her asking, the prosecutrix has disclosed that on the asking of petitioner, the prosecutrix has sent her objectionable photographs to him. They disclosed about the incident to the family of the petitioner. When petitioner along with his family



3

and two members of the society came to their house and checked petitioner's mobile, he has already deleted the objectionable photographs of the prosecutrix and accepted his mistake. The petitioner along with his family has also apologized from them. After sometime, father of the petitioner had started asking that his son was not at fault and had started to defame the victim. The prosecutrix has also disclosed that whenever petitioner came to their house, removed her clothes and has made forcible physical relations with her. One month back, when her daughter went to the house of the petitioner, he has bolted the room from inside and tried to commit forcible rape upon without her consent and clicked her photographs. On the statement of the complainant, FIR(supra) was registered against the petitioner.

3. Learned counsel for the petitioner *inter alia* contends that the petitioner has been falsely implicated in the present case and he is in custody since 27.02.2023 and material witnesses have already been examined and there is an inordinate and unexplained delay of 09 months in setting the criminal law into motion. The first alleged incident has taken place in the month of January 2022, however, the FIR(supra) was registered on 09.10.2022 and the alleged objectionable photographs have not been recovered and there is nothing in the final report under Section 173 Cr.P.C. to corroborate the case set up by the prosecution. Even, in the medication examination report (Annexure P-6) of the prosecutrix, nothing has been found to remotely suggest that the presecutrix had been subjected to sexual assault.

4. Per contra, learned State counsel assisted by learned counsel for the complainant opposes the prayer made by learned counsel for the petitioner on the ground that prosecutrix is 15 years of age and petitioner has committed an immoral act and in spite of the fact that after the death of his mother, the

complainant had been providing him food and whenever the prosecutrix used to go to the house of the petitioner to provide him food, he locked the door from inside and forcibly committed rape upon her and Snapchat ID of the prosecutrix was used by the petitioner and objectionable photographs have been posted on her ID by the petitioner and he has also threatened the prosecutrix that if she discloses about the rape to anyone then petitioner will commit suicide and will defame her. Learned State counsel has filed the custody certificate. Same is taken on record.

5. Having heard the learned counsel for the parties and after perusing the record, it transpires that petitioner is behind the bars since 22.02.2023. Trial of the case is likely to take long time to conclude as out of total 21 prosecution witnesses, only 02 have been examined so far. 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 above, without commenting upon the merits of the case, the present petition is allowed and petitioner-Akash Sharma is ordered to be released on regular bail, subject to his furnishing bail bonds/surety bonds to the satisfaction of CJM/Duty Magistrate concerned.

7. 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.

September 20, 2024
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

(i)	Whether speaking/reasoned	Yes/No
(ii)	Whether reportable	Yes/No