

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-27763-2023

Reserved on: 11.03.2024

Pronounced on : 13.03.2024

2024:PHHC: 036076

SITA RAM

.... PETITIONER

Vs.

STATE OF PUNJAB

.... RESPONDENT

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Argued by: - Mr. Surinder Thakur, Advocate, for the petitioner.

Mr. Amandeep Singh, DAG, Punjab.

DEEPAK GUPTA, J.

By way of this petition filed under Section 439 CrPC, petitioner prays for his release on regular bail, in a case arising out of FIR No.13 dated 07.02.2023, registered under Sections 377/34 IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (for short 'the POCSO Act) at Police Station Nangal, District Rupnagar, Punjab.

2.1 FIR was lodged on the complaint of father of the minor victim 'X' made on 07.02.2023, as per which after the death of his wife in May 2022, his two minor children (one male and one female) used to stay alone at home. On 30.01.2023, he was informed at about 7:00 PM by Sita Ram (petitioner), who used to cook food in the house of the complainant that his minor son was missing. Search was made for the minor son 'X' aged about 12 years, but in vain. Complainant kept on searching for his minor son for about 7 days, but could not succeed. On

the basis of the statement, FIR was initially registered under Section 346 IPC against unknown persons.

2.2 Further prosecution case is that on 10.02.2023, information was received from Police Station Pinjore, District Panchkula that victim i.e. minor son of the complainant was found at Pinjore. I.O. reached there. Statement of the minor son of the complainant was recorded, who told that since September 2022, petitioner Sita Ram used to entice him by giving eatables and do unnatural acts by removing all of his cloths and on account of the same, he (victim-minor son of the complainant) was under depression. It was further told by the victim boy that one day petitioner also brought Saurav Chauhan, resident of Ajauli Maur to his house, who also committed sexual assault upon him by removing all his clothes. Because of these acts, he (victim-minor son of the complainant) had earlier left the house twice. On 30.01.2023 he came to Panchkula side and was found by Panchkula Police, when he was roaming in the park. He did not disclose about the acts of the petitioner to anyone due to fear.

2.3 On the basis of the aforesaid statement of the victim, Section 377/34 IPC read with Section 6 of the POCSO Act were added; whereas, Section 346 IPC was deleted. On 11.02.2023, petitioner was arrested. Statement of victim boy (minor son of the complainant) was got recorded under Section 164 CrPC on 12.02.2023 before Id. Judicial Magistrate Ist Class, Nangal, wherein he reiterated the allegations. Medical examination of the victim and the petitioner was got conducted at Civil Hospital, Rupnagar. Their swabs were taken and deposited with Central Forensic Science Laboratory. Date of birth of the victim was found to be 29.11.2010 and thus, his age was about 12 years at the time of incident.

After concluding investigation, final report under Section 173 CrPC has been filed.

3.1 It is contended by Id. counsel that petitioner has been falsely implicated; that petitioner used to cook food in the house of the complainant; that disputes arose about the timing of the petitioner to come home for cooking food, because of which he has been implicated; that it is the petitioner, who had informed the complainant about the missing of the victim; that medical examination or the FSL report does not corroborate the allegations of the victim boy; that after recovery of the victim, he was interviewed by the reporter of a channel 'City Hulchal' and in that conversation, neither he made any allegations regarding any unnatural sex with him nor any such allegation was made by the complainant-father of the victim to the reporter.

3.2 Ld. counsel has also drawn attention towards the CFSL report so as to contend that neither the presence of semen was confirmed on perianal and anal swabs of the victim boy nor the genetic contribution of the petitioner was ascertained on the swabs of the victim boy.

3.3 Ld. counsel contends further that petitioner is in custody for the last more than one year; that statements of the victim and the complainant have already been recorded; that trial may take time to conclude and so, in all these circumstances, petitioner be granted bail.

4. Strongly opposing the bail petition, Id. State counsel has drawn attention towards the gravity of offence, which entails punishment even up to death. Ld. State counsel further submits that the victim as well as the complainant have supported the prosecution case during trial.

4.2 Ld. State counsel contends further that it cannot be expected from a young boy aged 12 years so as to make statement regarding the unnatural sex having been done with him by the petitioner to the news reporter and so, the conversation between the victim and the reporter, as referred by the petitioner, cannot be used by the petitioner for grant of bail. Attention is also drawn towards the fact that the last episode of intercourse was in the last week of January 2023; whereas the victim was medically examined on 13.02.2023 and therefore, in case no external injury has been found on the genitalia of the boy or the DNA test has been found to be negative, that can neither give an advantage to the petitioner nor can that be a reason to disbelieve the testimony of the victim made during trial. Prayer is made for rejecting the bail petition.

5. I have considered submissions of both the sides and have appraised the record.

6. The report of FSL has concluded the absence of semen on the perianal and anal swabs of the victim boy. Those swabs could also not be helpful in ascertaining the genetic contribution of the petitioner. Similarly, when the victim boy was examined at Civil Hospital, Nangal on 13.02.2023, no external injury was observed on his genitalia.

7. However the above factors in itself cannot be a reason to give any advantage to the petitioner at this stage, considering the fact that victim boy was being allegedly subjected to carnal intercourse ever-since September 2022 and the last episode had been done in the last week of January 2023. The victim boy had left home on 30.01.2023 and thus, there is a gap of at least 12 days in the last episode of intercourse and the

medical examination. The testimony of victim boy made during trial cannot be ignored at this stage. Simply because the victim and his father-complainant during their conversation with a reporter of a news channel did not disclose about the carnal intercourse done by the petitioner, cannot be a reason to disbelieve them. The offence under Section 6 of the POCSO Act provides for punishment with rigorous imprisonment for a term, which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of natural life of the accused plus fine or with death.

8. Having regard to all the aforesaid facts and circumstances and the gravity of the offence, but without commenting anything further on merits of the case, this Court is not inclined to grant benefit of regular bail to the petitioner. As such, the present petition is hereby dismissed.

Pending application(s), if any, also stand disposed of.

13.03.2024
Vivek

(DEEPAK GUPTA)
JUDGE

Whether speaking/reasoned?
Whether reportable?

Yes
No