

2024:PHHC:141719



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

**CRM-M-27262-2024 (O&M)**

**Reserved on : 04.10.2024**

**Pronounced on : 29.10.2024**

NIRMINDERJIT SINGH

....Petitioner

VERSUS

STATE OF PUNJAB

....Respondent

**CORAM : HON'BLE MRS. JUSTICE ALKA SARIN**

Present : Mr. Sanjay Kaushal, Senior Advocate with  
Ms. Pawelpreet Kaur, Advocate for the petitioner.

Mr. Pawan Kumar, DAG Punjab for the respondent.

Mr. Shubham Chandel, Advocate for the complainant.

**ALKA SARIN, J.**

1. This is the third petition for grant of regular bail to the petitioner in FIR No.0161 dated 16.12.2022 under Sections 376(2)(n), 506 of the Indian Penal Code, 1860; Section 201 of the Indian Penal Code, 1860 and Section 6 of Protection of Children from Sexual Offences Act, 2012 (added later on) registered at Police Station Sadar Ahmedgarh, District Malerkotla. The first bail petition being CRM-M-44786-2023 was dismissed as withdrawn on 31.10.2023. Though the first petition was dismissed as withdrawn, however, this Court vide order dated 31.10.2023 was constrained to initiate *suo motu* proceedings in public interest inasmuch as on 09.10.2023 during the pendency of the first petition, the counsel for the complainant had shown a video to the Court which was sent by the petitioner from the jail to the victim/prosecutrix

wherein music could be heard and 2-3 boys could be seen sitting in a room where there was also a Television (TV).The boys were seen eating and drinking in the said video which was purportedly sent from a mobile No.82649-69626 from the jail where the petitioner was lodged. Thereafter, the call records of the said phone number were requisitioned, and various directions were passed from time to time. Eventually, this Court took *suo motu* cognizance and directed that proceedings be initiated in public interest keeping in view the incident which had come to light. The second bail petition being CRM-M-16161-2024 was dismissed as withdrawn vide order dated 26.04.2024 with liberty to file afresh with better particulars.

2. Brief fact relevant to the present case are that FIR No.0161 dated 16.12.2022 was registered on the complaint of the victim/prosecutrix, on a representation dated 30.09.2022, to the Senior Superintendent of Police, Malerkotla. It was alleged in the FIR that in the month of June 2020, while the victim/prosecutrix was pursuing a course of Parlour at Orane, Malerkotla when she was a minor, the petitioner herein in connivance with other accused persons, with an intention to molest her physically, started roaming near Orane, Malerkotla and he assured her that he has 70 Bighas of land and one big house at Kharar and that he would keep her happy after performing marriage with her. He also introduced her to his other family members. In January 2021 the accused persons called the victim/prosecutrix to their house and gave her tea after mixing some intoxicant substance in the same and after drinking which she became unconscious and thereafter the present petitioner forcibly raped her and also took objectionable photographs and made videos.

He is alleged to have also committed unnatural sex with her. Thereafter, the accused persons blackmailed the victim/prosecutrix by showing her photos and videos and threatened her that they would put the same on social media and send it to her parents. They further told her that she should do IELTS and that they would bear her whole expenditure of sending her to Canada. In July 2021 she started doing IELTS from Trackers, Malerkotla. In February 2022 the petitioner herein took her to Village Pakhhowal, District Ludhiana where he forcibly committed rape with her. In March 2022 she is alleged to have become pregnant. However, the accused persons took her to a Nursing Home and thereafter an ultrasound scan was done and by giving her some medicine the pregnancy was aborted. On an inquiry the age of the prosecutrix was found to be 17 years. It also transpired during investigation that the petitioner on the pretext of marrying the victim/prosecutrix had physical relations with her and had kept her passport and Class 10<sup>th</sup> and 12<sup>th</sup> certificates also. Further, since the victim/prosecutrix did not agree to marry the petitioner, he beat up her father, namely Avtar Singh and due to this incident FIR No.129 dated 29.09.2022 was registered under Sections 341, 323, 506, 427, 34 of the Indian Penal Code, 1860 at Police Station Sadar Ahmedgarh, District Malerkotla.

3. Learned senior counsel appearing on behalf of the petitioner would contend that the petitioner has been in custody for a period of 1 year 5 months and 9 days and that the victim/prosecutrix as well as her father have since been examined and cross-examined. Learned senior counsel has further contended that the previous conduct of the petitioner should not stand in the way of granting regular bail to him.

4. *Per contra*, learned counsel for the State has relied upon the status reports filed by way of affidavits dated 08.07.2024 of Amritpal Singh, PPS, Deputy Superintendent of Police, Sub-Division Ahmedgarh, District Malerkotla and dated 20.08.2024 of Gagan Ajit Singh, PPS, Senior Superintendent of Police, District Malerkotla. Learned counsel for the State would contend that though the FIR was registered on 16.12.2022, however, the petitioner was not arrested in the present case and was eventually arrested in Amritsar in DDR No.3 dated 14.04.2023 under Sections 109 and 151 of the Code of Criminal Procedure, 1973 registered at Police Station Division-B, Amritsar and was produced on production warrants on 19.04.2023 before the Judicial Magistrate (1<sup>st</sup> Class) concerned in the present case. Learned counsel for the State has further pointed out to the conduct of the petitioner in not only sending messages and videos to the victim/prosecutrix while lodged in jail as also his conduct in beating up the father of the victim//prosecutrix qua which FIR No.129 dated 29.09.2022 has been lodged. Further, another case under Sections 109 and 151 CrPC is pending against the petitioner in which he was actually apprehended. Another case was registered against the petitioner under Section 52 of the Prisons Act, 1894 and Sections 379 and 411 of Indian Penal Code, 1860. Learned counsel for the State has also pointed out the conduct of the petitioner while lodged in jail where the petitioner was punished by the Deputy Superintendent against Order No.83 and visitors were blocked for the offence of disorderly behavior and misbehavior for a period of one month. He has further stated that though the custody certificate reveals that the petitioner has been in custody for a period of 1 year 5 months and 9

days, however, the trial is almost complete as out of 20 prosecution witnesses, 13 have already been examined.

5. Heard.

6. In the present case, the petitioner is facing the charge under Section 376(2)(n) of the Indian Penal Code, 1860 and Section 6 of Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as 'the POCSO Act') on the allegations that the petitioner repeatedly raped the victim/prosecutrix who was a minor and also took her objectionable photographs and made videos. The victim/prosecutrix was alleged to have become pregnant and the petitioner got her pregnancy aborted by administering her some medication.

7. The POCSO Act is designed to safeguard the interest of children. As per the statement and objective of the POCSO Act, it is a comprehensive legislation safeguarding the interest of children at every stage of the judicial process, incorporating child friendly procedures for reporting, recording of the evidence, investigation and trial of offence and provision for establishment of Special Courts for speedy trial of such offence. One of the special features of POCSO Act is that Section 29 states that 'when a person is prosecuted for committing an offence of sexual assault against a minor, the Special Court trying the case 'shall presume' the accused to be guilty'.

8. The Hon'ble Supreme Court of India in **Deepak Yadav V/s State of U.P. & Anr. [2022 (3) RCR (Criminal) 231]**, while dealing with the principles governing grant of regular bail, has held as under :

*'19. Section 439 of the Criminal Procedure Code, 1973 is the guiding principle for adjudicating a Regular Bail Application wherein Court takes into consideration several aspects. The jurisdiction to grant bail has to be exercised cautiously on the basis of well-settled principles having regard to the facts and circumstances of each case.*

*20. In Prahlad Singh Bhati Vs. NCT of Delhi And Another (2001) 4 SCC 280, a two-Judge Bench of this Court stated the principles which are to be considered while granting bail which are as follows : -*

*“8. The jurisdiction to grant bail has to be exercised on the basis of well-settled principles having regard to the circumstances of each case and not in an arbitrary manner. While granting the bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character, behaviour, means and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public or State and similar other considerations. It has also to be kept in mind*

*that for the purposes of granting the bail the Legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the court dealing with the grant of bail can only satisfy it as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not excepted, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt."*

*21. As reiterated by the two-Judge Bench of this Court in Prasanta Kumar Sarkar Vs. Ashish Chatterjee And Another, (2010) 14 SCC 496, it is well-settled that the factors to be borne in mind while considering an application for bail are:*

- (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;*
- (ii) nature and gravity of the accusation;*
- (iii) severity of the punishment in the event of conviction;*
- (iv) danger of the accused absconding or fleeing, if released on bail;*

(v) *character, behaviour, means, position and standing of the accused;*

(vi) *likelihood of the offence being repeated;*

(vii) *reasonable apprehension of the witnesses being influenced; and*

(viii) *danger, of course, of justice being thwarted by grant of bail.*

*22. The decision in Prasanta(Supra) has been consistently followed by this Court in Ash Mohammad Vs. Shiv Raj Singh alias Lalla Babu And Another, (2012) 9 SCC 446, Ranjit Singh Vs. State of Madhya Pradesh And Others (2013) 16 SCC 797, Neeru Yadav Vs. State of Uttar Pradesh And Another (2014) 16 SCC 508, Virupakshappa Gouda And Another Vs. State of Karnataka And Another (2017) 5 SCC 406, State of Orissa Vs. Mahimananda Mishra (2018) 10 SCC 516.*

*23. In a recent pronouncement of this Court in the case of ‘Y’ Vs. State of Rajasthan & Anr. Criminal Appeal No.649 of 2022 decided on 19.04.2022 authored by one of us (Hon’ble N.V. Ramana, CJI), it has been observed as under :-*

*“22. The impugned order passed by the High Court is cryptic, and does not suggest any application of mind. There is a recent trend of passing such orders*

*granting or refusing to grant bail, where the Courts make a general observation that “the facts and the circumstances” have been considered. No specific reasons are indicated which precipitated the passing of the order by the Court.*

*23. Such a situation continues despite various judgments of this Court wherein this Court has disapproved of such a practice. In the case of Mahipal (Supra), this Court observed as follows:-*

*25. Merely recording “having perused the record” and “on the facts and circumstances of the case” does not subserve the purpose of a reasoned judicial order. It is a fundamental premise of open justice, to which our judicial system is committed, that factors which have weighed in the mind of the Judge in the rejection or the grant of bail are recorded in the order passed. Open justice is premised on the notion that justice should not only be done, but should manifestly and undoubtedly be seen to be done. The duty of Judges to give reasoned decisions lies at the heart of this commitment. Questions of the grant of bail concern both liberty of individuals*

*undergoing criminal prosecution as well as the interests of the criminal justice system in ensuring that those who commit crimes are not afforded the opportunity to obstruct justice. Judges are duty-bound to explain the basis on which they have arrived at a conclusion.”*

*(emphasis supplied)*

*24. For grant or denial of bail, the “nature of crime” has a huge relevancy. The key consideration which govern the grant of bail were elucidated in the judgment of this Court in Ram Govind Upadhyay Vs. Sudarshan Singh (2002) 3 SCC 598, wherein it has been observed as under: -*

*“4. Apart from the above, certain other which may be attributed to be relevant considerations may also be noticed at this juncture, though however, the same are only illustrative and not exhaustive, neither there can be any. The considerations being:*  
*(a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.*

*(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.*

*(c) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.*

*(d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.”*

*25. Similarly, the parameters to be taken into consideration for grant of bail by the courts has been described in Kalyan Chandra Sarkar Vs. Rajesh Ranjan alias Pappu Yadav And Another (2004) 7 SCC 528 as under :-*

*“11. The law in regard to grant or refusal of bail is very well-settled. The Court granting bail should exercise its discretion in a judicious manner and not*

*as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:*

*(a) the nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.*

*(b) reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.*

*(c) prima facie satisfaction of the court in support of the charge.”*

9. Coming to the present case, the FIR was registered on 16.12.2022 and during the investigation the petitioner remained at large and proceedings to declare him as a proclaimed offender were initiated. On

07.02.2023 challan was presented against the petitioner in the Court in his absence.

10. While fleeing from the investigation, the petitioner committed another offence under Sections 109 and 151 CrPC regarding which DDR No.3 dated 14.04.2023 was registered against him at Police Station 'B' Division Amritsar. When he was lodged in Central Jail, Amritsar in that regard, the Investigating Agency received information from Police Station 'B' Division, Amritsar and accordingly after obtaining his production warrants from the Special Court concerned, the petitioner was arrested in the present case.

11. Prior to the registration of the instant FIR against the petitioner, he did not even spare the father of the victim/prosecutrix and wrongfully restrained him by voluntarily causing hurt, criminal intimidation and mischief. Regarding that conduct of the petitioner, FIR No.129 dated 29.09.2022 under Sections 341, 323, 506, 427, 34 of the Indian Penal Code, 1860 was also registered against him.

12. Still further, due to disorderly behavior and misbehavior in jail, another case was registered against the petitioner for commission of offence under Section 52 of the Prisons Act, 1894 read with Sections 379/411 of Indian Penal Code, 1860. The petitioner was also punished, and visitors were blocked for a period for one month.

13. Not only this, the conduct of the petitioner has been reprehensible inasmuch as he indulged in illegal activities of using a mobile phone from the jail and sent videos to the victim/prosecutrix wherein music could be heard and 2-3 boys could be seen sitting in a room eating and

drinking. No doubt such an act could not have been done by him without the active connivance of the jail authorities but be that as it may, the petitioner tried to intimidate the victim /prosecutrix even from the jail. The said facts when brought to the notice of this Court, as noticed above, resulted in initiation of *suo motu* proceedings in public interest which are pending before the Hon'ble Division Bench of this Court.

14. The arguments of learned senior counsel for the petitioner that the statement of the victim/prosecutrix has since been recorded and now she has gone abroad and that there would be no question of the petitioner being able to harass her or to approach her in any manner if he is released on bail, cannot be accepted in view the above narrated conduct of the petitioner.

15. Further, a perusal of the *zimni* orders of the Special Court concerned reveals that the victim/prosecutrix was examined in chief on 19.07.2023 and thereafter the defence counsel on behalf of the petitioner appears to have indulged in delaying her cross-examination compelling the Special Court concerned to call her repeatedly to the Court. Ultimately the victim/prosecutrix was cross-examined on 03.01.2024 i.e. after a gap of almost six months since the date when her examination-in-chief was recorded. Thereafter also, adjournments were availed by the defence counsel without any substantive reasons. Moreover, as per the State counsel out of 20 prosecution witnesses 13 have already been examined and the matter before the Special Court is pending for consideration of an application under Section 319 CrPC.

16. Keeping in view the nature of crime/charge against the petitioner and his above elucidated conduct during investigation and trial, this Court does not deem it appropriate to enlarge the petitioner on regular bail at this stage. The present petition, being devoid of any merits, is accordingly dismissed. Pending applications, if any, also stand disposed off.

17. It is, however, made clear that any observation made in this order shall not be taken as an expression of opinion on the merits of the case before the Trial Court.

**29.10.2024**

*Aman Jain*

**(ALKA SARIN)**

**JUDGE**

*NOTE : Whether speaking/non-speaking: Speaking  
Whether reportable: Yes/No*