

CRM-M-28376-2024

-1- 2024:PHHC:081176



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

211

CRM-M-28376-2024

Date of Decision: 01.07.2024

Dalip

.... Petitioner

Versus

State of Haryana and another

.... Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: - Mr. Sandeep Kotla, Advocate for petitioner.

Mr. Aditya Pal Singla, AAG, Haryana.

NIDHI GUPTA, J. (ORAL)

The petitioner has filed the present 1st petition under Section 439 of the Code of Criminal Procedure, 1973, for grant of regular bail in case FIR No. 579 dated 05.08.2023 registered under Sections 363, 366, 344, 376(2)(n) and 376(3) IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (for short- 'the POCSO Act') at Police Station Urban Estate Hisar, District Hisar.

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

"To, SHO Sahib, PS 9/11, Hisar Subject;- Sir, it is submitted that I Shyam Rai s/o Sh. Jagdish Rai r/o New Model Town, N-31, behind Jindal Factory, District Hisar. I am having one daughter named Annu, aged 16 years, and missing since yesterday. We have tried our level best to find out her whereabouts and came to know that one boy named Dalip has enticing her away, his father's name is Ram Sewak and



r/o Modal Town. When we went there to enquire about then they started abusing us and said that you can't find out your daughter, do whatever you want to do. She is wearing green colour salwar suit and wearing white colour sandal, fair colour, long hair and wearing spectacles, height 5 ft. So, it is therefore prayed that please trace out my daughter.....”

Learned counsel for the petitioner, *inter alia*, submits that initially, the complainant/father of the victim had lodged the present FIR under Section 344 IPC only for missing person. Learned counsel submits that in actual fact, the petitioner and the victim were in a consensual relationship. In this regard, learned counsel for the petitioner refers to the statement of the victim dated 18.08.2023 (Annexure P-2) recorded under Section 164 Cr.P.C., wherein she had categorically stated that she and the petitioner were known to each other and were on the talking terms; that she had gone with the petitioner of her own sweet will; and that she wanted to marry the petitioner, but her parents were against the marriage as the petitioner belongs to lower caste. It is further admitted by the victim in her statement that the petitioner had entered into physical relationship with the victim 2-3 times with her consent. Pursuant to this statement of the victim, offences under Sections 376(2)(n) and 376(3) IPC, and Section 6 of the POCSO Act were added. Subsequently, the petitioner was arrested on 02.09.2023 and has been in custody since then. Thus, it is prayed that the 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 at the time of incident, the victim was minor being 16½ years of age, and under the provisions of POCSO Act, any alleged consent of victim is



immaterial. Learned counsel for the State, further informs that custody certificate of the petitioner is not available today, however, admits that as noted in the impugned order dated 22.05.2024 (Annexure P-3) passed by the learned Additional Sessions Judge, Fast Track Special Court, Hisar, the petitioner has been in custody since 02.09.2023. It is further informed that there is no other case against the petitioner. Furthermore, challan in the present case was presented on 14.11.2023; charges were framed on 30.03.2024; out of total 16 prosecution witnesses, none has been examined so far; and the next date of hearing before the learned trial Court is 26.07.2024.

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 it has been held that consensual adolescent relationships cannot be criminalized. Relevant para No. 7, is reproduced as under:-

“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 peculiar facts and circumstances of the case; including the fact that the petitioner has been in custody since the date of his arrest i.e. 02.09.2023, and that there is no other case against the petitioner; and also the fact that out of total 16 prosecution witnesses, none has been examined so far, therefore, conclusion of trial will take considerable time; and no useful purpose would be served by further detention of the petitioner. Thus, the present petition is **allowed**.

The petitioner-Dalip S/o Ram Sewak, 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.

01.07.2024
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(NIDHI GUPTA)
JUDGE

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