

**207 IN THE HIGH COURT OF PUNJAB AND HARYANA  
CHANDIGARH****CRM-M-33157-2023 (O&M)****Date of Decision: 16.01.2024****MALKIT SINGH @ MALKEET SINGH @ JOTA****...Petitioner****V/S****STATE OF PUNJAB****...Respondent****CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**

Present: Mr. Jaskirat Singh Dhaliwal, Advocate  
for the petitioner.

Mr. Digvijay Nagpal, AAG Punjab.

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**HARPREET SINGH BRAR J. (Oral)**

1. This is the first petition under Section 439 of Cr.P.C. seeking grant of regular bail to the petitioner in the case bearing FIR No. 43 dated 26.03.2015 registered under Section 377 of Indian Penal Code and Section 4 of Protection of Children from Sexual Offences Act at Police Station Lambi, District Sri Muktsar Sahib, Punjab.

2. Present FIR was lodged on the statement of complainant-Mangat Singh on the allegations that his son, aged about 11 years, who is studying in 9<sup>th</sup> Class, did not return from the school on 24.03.2015. The complainant along with his brother Boota Singh started searching for his son and at about 8.00 PM, when they reached near the Cremation Ground, near Samadh of Baba Heera Das, they heard the sound of a child crying. When both of them went there, they found that the petitioner was doing wrong things with complainant's son by removing his pants and the boy was crying. On sighting the complainant and his brother, the petitioner ran away by scaling the wall of the Cremation Ground. They brought back his son to their home and his son was suffering from

abdomen pain and on these allegations, the instant FIR was registered.

3. Learned counsel for the petitioner *inter alia* contends that the medical record does not corroborate the ocular version as there is no opinion with regard to any penetrative sexual assault for attracting the provisions of Section 377 of Indian Penal Code or Section 4 of the Prevention of Children from Sexual Offences Act, as discernible from the Medico Legal Report of the victim (Annexure P-2). The petitioner is behind the bars since 09.12.2021 and the material witnesses i.e. complainant as well as the victim have already been examined by the learned trial Court and the remaining witnesses are only official witnesses. The trial of the case is progressing at a snail's pace.

4. Per contra, learned State counsel has filed the reply by way of affidavit of Jaspal Singh, PPS, Deputy Superintendent of Police, Sub-Divison Lambi, District Sri Muktsar Sahib on behalf of respondent-State and opposes the grant of regular bail to the petitioner on the ground that petitioner is accused of a serious crime and he remained absconded and was declared as Proclaimed Offender and thereafter he was arrested. As such, keeping in view the gravity of the offences and the conduct of the accused/petitioner, he is not entitled to the concession of regular bail.

5. Having heard the learned counsel for the parties and after perusing the record, it transpires that petitioner is behind the bars since 09.12.2021. Trial of the case will take long time to conclude as out of 24 cited prosecution witnesses, only 05 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 trial.

6. Without commenting anything on the merits of the case, lest it may prejudice the rights of the parties, the present petition is allowed and petitioner-Malkit Singh @ Malkeet Singh @ Jota is ordered to be released on regular bail subject to his furnishing requisite bail bonds/surety bonds to the satisfaction of the concerned trial Court/Chief Judicial Magistrate/Duty Magistrate.

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.

16.01.2024  
Ajay Goswami

(HARPREET SINGH BRAR)  
JUDGE

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|---------------------------|--------|
| Whether speaking/reasoned | Yes/No |
| Whether reportable        | Yes/No |