

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

CRM-M-38579-2023

Reserved on: 08th January, 2024

Date of decision: 24th January, 2024

MOHAMMAD AKRAM

.....Petitioner

versus

STATE OF PUNJAB

.....Respondent

CORAM: HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present: Mr. Karan Bhardwaj, Advocate
for the petitioner.

Ms. Himani Arora, A.A.G., Punjab.

HARPREET KAUR JEEWAN, J. (ORAL)

1. The instant petition has been filed by the petitioner under Section 439 of the Code of Criminal Procedure, 1973 seeking regular bail in case FIR No.39 dated 08.04.2023, under Sections 376 A, B(2)(f, i, j & k) of IPC and Section 6 of POCSO Act, 2012, registered at Police Station City-2, Malerkotla (Annexure P-2).

2. As per the prosecution case, the complainant, who is the mother of the victim, got married to the petitioner about 09 years ago and due to some matrimonial discord with the petitioner, on 05.04.2023, she left the matrimonial home and also left her two minor daughters with the petitioner. Two days thereafter, on 07.04.2023, the victim called her mother and informed that she is having acute pain in her stomach. The mother brought the victim from her matrimonial home and got her admitted in Civil Hospital for treatment. The victim told her mother that on the previous night, her father-petitioner had done misdeed with her on the roof room. On receiving the medical ruqa from the hospital, the statement of the mother of the victim was recorded and FIR was registered against the petitioner.

3. Learned counsel for the petitioner contends that as per the medical evidence, MLR dated 08.04.2023 (Annexure P-6), there is no indication that rape or

sexual assault has been committed upon the victim as no external injury was found. It is further contended by learned counsel for the petitioner that there is a delay in recording of the statement of the victim under Section 164 Cr.P.C. and during this period, the victim, who is only 07 years of age, was under the active influence of her mother (complainant), who is having a matrimonial discord with the petitioner. The petitioner has been falsely implicated in this case. The allegations of the complainant do not inspire confidence that she left her 02 minor daughters with the petitioner in anger. The conduct of the complainant that she was staying separately from the petitioner and she suddenly came to drop her 02 minor daughters with the petitioner does not inspire confidence. The CCTV footage and photographs of the prosecutrix does not support the prosecution case as the victim is seen in a happy mood. Even there is delay in admitting the prosecutrix to the hospital.

4. The learned State counsel has filed a custody certificate dated 07.01.2024 reflecting the custody of the petitioner-accused as 08 months and 18 days. The State counsel has opposed the bail application on the ground of gravity of allegations levelled against the petitioner.

5. I have heard the aforesaid contentions.

6. As per the paper book, the final report under Section 173 Cr.P.C. (Annexure P-7) has been presented before the trial Court. However, as informed by the State counsel, only one PW has been examined on 04.11.2023 and no material witness has been examined. There are serious allegations against the petitioner about sexual abuse of a 07 year old girl child. As per the medical examination of the victim (Annexure P-6), the brief history of the case was given to the doctor that the parents of the victim are living separately and the victim complained about pain in genital area when she came back to her mother. After examination of the injuries of the victim, the doctor had found redness around the urethra and after examination of the anus,

during the trial. The statement of the victim under Section 164 Cr.P.C. has been reproduced by the petitioner in Para No.10 of the petition, which reads as under:-

“That my father is very bad. He takes me to “AARA” and does not get me anything to eat. I was sleeping, I do not remember anything that my father has done anything or not but my genitives are paining. Mumma gave call to papa and asked him that why I am in paint. Papa said fire has erupted so what. My uncle and grandmother took me to hospital. I went to hospital earlier. Mumma checked the house that skin was ton and there was blood then doctor checked and get me in hospital. Now I stay with mumma. Papa gives beatings to mumma therefore mumma left the house. Mumma let me with papa in anger. I have two sisters and they also stay with me, Aisha age 7 years, 21.04.2023.”

7. No inference regarding the innocence of the petitioner can be drawn from the said statement.
8. Keeping in view the gravity of the allegations levelled against the petitioner, the tender age of the victim and the fact that the minor victim is yet to be examined by the trial Court, at this stage, no ground is made out to release the petitioner on bail. Consequently, the present bail application stands dismissed.
9. Nothing expressed hereinabove would be construed to be an expression of opinion on merits of the case.

(HARPREET KAUR JEEWAN)
JUDGE

24th January, 2024
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Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No