



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-1571-2024 (O&M)
Reserved on: 30.09.2024
Pronounced on: 01.10.2024

X through his mother

... Petitioner

Vs.

State of Haryana and another

... Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Rakesh Nehra, Sr. Advocate with
Mr. Saurav Bhatia, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG, Haryana.

Ms. Vibhuti Narayan, Advocate
for respondent No.2.

HARPREET SINGH BRAR, J. (ORAL)

1. Present revision petition has been preferred against the impugned order dated 16.07.2024 passed by learned Principal Magistrate, Juvenile Justice Board, Gurugram and the order dated 06.08.2024 passed by learned Presiding Officer, Children's Court-cum-Additional Sessions Judge, Fast Track Special Court for the offences under the POCSO Act, 2012, Gurugram, vide which the application for grant of regular bail to the



petitioner in FIR No.335 dated 10.07.2024 under Sections 376(3) & 376(2) (n) of the Indian Penal Code, 1860 (for short 'IPC') and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act'), registered at Police Station Badshahpur, District Gurugram, was dismissed.

2. The present FIR was registered on the complaint made by mother of the prosecutrix on the allegations that she has two children; one daughter and one son. His daughter is about 16 years of age and she was studying in Class 10th. The petitioner was residing in their society and he was also studying. He met daughter of the complainant in the month of October, 2023 with bad intention and by enticing her, he exchanged his mobile number with her and started talking to her on phone and after sometime, he got closer to the prosecutrix and developed physical relations with her. The petitioner also took some obscene/objectionable photos etc. of her daughter and started blackmailing her. Thereafter, he made viral the said objectionable photos of daughter of the complainant to his friends and one of the acquaintances Karan Ahlawat, whose mobile number is 98109-97922 and others also i.e. Mohit and Kanishk, due to which, her daughter used to remain under tension. When the complainant asked about the same, she told the aforesaid entire episode to her. Later on, the complainant had complained about this incident to mother of the petitioner. But the petitioner did not mend his ways and is tarnishing the image of her daughter. On 08.06.2024,



at night, the prosecutrix told about the whole incident to the complainant. It is further alleged that the petitioner has done wrong act with her daughter and is making viral objectionable photos of her on social media, due to which image of the prosecutrix is getting tarnished. With these allegations, FIR (*supra*) was registered.

3. Learned counsel for the petitioner, *inter alia*, contends that as per case set up by the prosecution, the victim-prosecutrix has informed her mother with regard to her sexual exploitation by the petitioner on 08.06.2024, however, FIR (*supra*) was registered on 10.07.2024 after an inordinate and unexplained delay of more than one month, which creates a serious dent on the case set up by the prosecution. Further, perusal of the FIR (*supra*) clearly indicates that no specific date, place or time has been mentioned with regard to alleged exploitation of the prosecutrix. The petitioner is a young boy of 16 years of age and learned Principal Magistrate, Juvenile Justice Board, Gurugram and learned Presiding Officer, Children's Court-cum-Additional Sessions Judge, Fast Track Special Court under the POCSO Act, 2012, Gurugram passed the impugned orders dated 16.07.2024 and 06.08.2024 respectively, without considering the provisions contained in Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short 'J.J. Act'). The FIR (*supra*) was registered as a counter-blast to the complaint moved by mother of the petitioner against the complainant and her family members. The entire edifice of the case of the prosecution is



based upon the premise that the petitioner was in possession of objectionable material of the prosecutrix and he circulated the same to his friends, however, during the investigation, said objectionable material was not recovered, in spite of the fact that the petitioner handed over his mobile to the Investigating Officer. There is no other corroboration in the shape of medical or forensic evidence to support the case of the prosecution.

4. Learned counsel appearing for respondent No.2 vehemently opposes the prayer made by the petitioner on the ground that the petitioner has blackmailed and sexually exploited the prosecutrix on the basis of some objectionable material, which was in his possession and the prosecutrix reiterated her allegations before learned learned Judicial Magistrate 1st Class, when her statement was recorded under Section 164 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') [*now Section 183 of Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS')*]. Further, the petitioner has demeaned and shattered the reputation of the prosecutrix in the society by circulating the aforementioned objectionable material to his friends and keeping in view the serious and specific allegations against the petitioner, he is not entitled to any relief.

5. Learned State counsel opposes the prayer made by the petitioner on the ground that the petitioner is accused of committing aggravated penetrative sexual assault upon the prosecutrix on multiple occasions and also circulating her obscene/objectionable photos. However, she could not



controvert the fact that the petitioner is not involved in any other case and he was less than 18 years of age at the time of incident.

6. Having heard learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that the petitioner is behind bars since 11.07.2024 and the investigating agency has already concluded the investigation and presented the final report under Section 173 Cr.P.C. (now Section 193 of BNSS) and it will take long time in conclusion of the trial. The culpability, if any, would be determined at the time of trial. Keeping the petitioner in further detention without the prospect of the trial being concluded in the near future, would be violative of his rights under Article 21 of the Constitution of India.

7. A two Judge Bench of the Hon'ble Supreme Court in ***Satender Kumar Antil Vs. CBI, (2022) 10 SCC 51***, with respect to prevailing conditions of undertrial prisoner in India has observed as under: -

“6. Jails in India are flooded with undertrial prisoners. The statistics placed before us would indicate that more than 2/3rd of the inmates of the prisons constitute undertrial prisoners. Of this category of prisoners, majority may not even be required to be arrested despite registration of a cognizable offence, being charged with offences punishable for seven years or less. They are not only poor and illiterate but also would include women. Thus, there is a culture of offence being inherited by many of them. As observed by this Court, it certainly exhibits the mindset, a vestige of colonial India, on the part of the investigating agency, notwithstanding the fact arrest is a draconian measure resulting in curtailment of liberty, and thus to be used sparingly. In a democracy, there can never be an



impression that it is a police State as both are conceptually opposite to each other.”

8. In view of the above, present revision petition is allowed and the impugned order dated 16.07.2024 passed by learned Principal Magistrate, Juvenile Justice Board, Gurugram and the order dated 06.08.2024 passed by learned Presiding Officer, Children’s Court-cum-Additional Sessions Judge, Fast Track Special Court for the offences under the POCSO Act, 2012, Gurugram, dismissing the application of the petitioner for grant of regular bail, are hereby set aside. Thus, without commenting upon the merits of the case lest it may prejudice the outcome of the trial, petitioner X (minor) through his mother, is ordered to be released on regular bail during trial, on his furnishing bail/surety bonds to the satisfaction of learned Illaqa Magistrate/trial Court concerned.

9. Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and learned trial Court shall proceed without being prejudiced by the observations of this Court.

[HARPREET SINGH BRAR]
JUDGE

01.10.2024
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No