

132 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-46167-2023 (O&M)
Date of Decision: 08.02.2024

SOURABH

.....PETITIONER

Vs.

STATE OF PUNJAB

.....RESPONDENTS

CORAM: HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present: Mr. R.K. Arya, Advocate,
for the petitioner.

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

Mr. Gautam Kaile, Advocate,
for the complainant.

HARPREET KAUR JEEWAN J. (ORAL)

1. Prayer in the present petition filed under Section 482 Cr.P.C. for quashing of the order 29.08.2023 (Annexure P-4), passed by learned Additional Sessions Judge, Gurdaspur, whereby the order of granting bail to the petitioner in case FIR No. 64, dated 07.09.2021, under Sections 376-A and 376-B of the IPC and Section 4 of the Protection of Children from Sexual Offences Act, 2012, registered at Police Station Dorangla, District Gurdaspur, by the Juvenile Justice Board at Gurdaspur, vide order dated 16.09.2021 (Annexure P-2) was cancelled and non-bailable warrants of arrest of the petitioner have been issued.
2. Counsel for the petitioner *inter alia* contends that after the registration of the FIR, the petitioner was arrested and he was released on regular bail, as per the order dated 16.09.2021 (Annexure P-2) by the

Juvenile Justice Board, Gurdaspur. A minor dispute took place between the grand-father of the petitioner with his neighbours namely Jagpreet Singh, Ramesh Kumar and Bodha. However, the father of the petitioner was falsely implicated in FIR No. 44, dated 01.08.2023, under Sections 323, 324 and 325 of the IPC, registered at Police Station Dorangla, District Gurdaspur (Annexure P-3). The said FIR was got registered just to make out a ground for cancellation of the bail granted by the Juvenile Justice Board. It was contended that the petitioner has been regularly appearing before the Juvenile Justice Board and he did not violate of the terms and conditions of the bail order, dated 16.09.2021 and even he is not named in the aforesid FIR No. 44 (Annexure P-3) despite that the Additional Sessions Judge, Gurdaspur, has cancelled the bail order passed by the Juvenile Justice Board by passing the impugned order 29.08.2023 (Annexure P-4).

3. Learned counsel appearing on behalf of the complainant has opposed the petition, on the ground that the petitioner had been threatening the victim and his family members to withdraw the case and even the family members of the complainant's had assaulted and the FIR No. 44 (Annexure P-3) in this regard was got registered. As such, the bail order had been rightly cancelled by the learned Additional Sessions Judge, Gurdaspur.

4. The State has filed a short reply, dated 13.11.2023, by way of an affidavit of Sh. Baljit Singh, Deputy Superintendent of Police, PBI-cum-Dinanagar, District Gurdaspur, wherein it is contended that FIR No. 64, dated 07.09.2021 was registered against the petitioner under Sections 376-A and 376-B of the IPC and Section 4 of the POCSO Act, at Police Station Dorangla, District Gurdaspur, at the instance of the mother of the victim for

committing rape of a minor daughter whose aged about 08 years. The date of birth of the victim is 18.01.2023. The petitioner was arrested on 07.09.2021. His date of birth is 23.07.2005 and he was also minor at the time of the commission of offence.

5. It is further contended in the status report that the medical examination of the victim was conducted and after the receipt of the Chemical Examiner, no human semen was detected on the vaginal swabs of the victim and thereafter, the doctor gave an opinion that possibility of sexual intercourse cannot be ruled out.

6. It is also contended in the status report that the statement of the victim under Section 164 Cr.P.C. was also recorded and thereafter, the offence under Sections 342 and 365 of the IPC were added, vide GD No. 26, dated 07.09.2021. The offence under Section 365 IPC was deleted and Section 366 IPC was added, vide GD No. 28, dated 09.11.2021.

7. It is further contended that the final report under Section 173 Cr.P.C. was presented before the Juvenile Justice Board and charges have been framed. Out of 19 prosecution witnesses, 08 have been examined. The petitioner was absent on 22.09.2023, as such, non-bailable warrants of arrest have been issued.

8. In the status report, the factum of registration of FIR No. 44, dated 01.08.2023 (Annexure P-3) had been admitted and it has been alleged that as per the medico-legally report of Sh. Darshan Lal, who is the grandfather of the victim, four injuries were found in his person and injury No. 1 has been declared grievous in nature. The said case is under the investigation.

The petitioner is not named in the said case. However, Jagpreet Singh,

Mahinder Pal (father of the petitioner), Ramesh Kumar and Bodha named in the said FIR were arrested on 12.08.2023.

9. Learned State counsel contends that in view of the circumstances mentioned in the status report, the petitioner had violated the terms and conditions of the bail and the bail order has been rightly cancelled.

10. I have considered the aforesaid contentions.

11. Admittedly, the petitioner was juvenile at the time of commission of the alleged occurrence. Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short 'the Act') deals with the provisions granting bail to the person who is apparently a child alleged to be in conflict with law. As per sub-section (1) of Section 12 of the Act, a child alleged to have been conflict with law who is alleged to have committed a bailable or non-bailable offence can be released on bail with or without surety or he can be placed under the supervision of a Probation Officer or under the care of any fit person. The bail can also be declined on any of the grounds mentioned in proviso to sub-section (1) of Section 12 of the Act.

12. A perusal of the order dated 16.09.2021 (Annexure P-2) passed by the Juvenile Justice Board, indicate that the request for grant of bail was opposed by the Public Prosecutor on the ground of allegations against the juvenile that he has committed a rape with the minor girl. While granting the bail to the petitioner, the Juvenile Justice Board apart from seeking a bail bonds in the sum of Rs. 50,000/- with one surety in the like amount, has put various conditions including that the custodian/guardian of the applicant shall regularly monitoring the movement of the applicant and that the

applicant will not induce/threaten any of the prosecution witness or tamper the evidence of the prosecution in any manner. The relevant portion of the order dated 16.09.2021 (Annexure P-2 passed by the Juvenile Justice Board reads as under:-

*“As a sequel of the above discussion, child in conflict with law, i.e. juvenile-applicant is allowed to be released on bail on furnishing his bail bonds **in the sum of Rs. 50,000/- with one surety of like amount.** The custodian/guardian of the applicant shall regularly monitor the movement of the applicant and ensure that the applicant do not come in association with any known criminals and will not indulge in any other offence. Further, also subject to the following conditions undertaking to be furnished by the guardian that he shall keep the applicant in custody with following conditions:-*

(i) The applicant will appear before this Court on each and every date of hearing.

(ii) The applicant will not induce/threaten any of the prosecution witnesses or tamper the evidence of the prosecution in any manner.

(iii) The applicant will not leave the country without prior permission of this Board.”

13. Two years after the bail was granted to the petitioner, FIR No. 44, dated 01.08.2023 (Annexure P-3) was registered at the instance of the grand-father of the victim who has categorically alleged in the FIR that the matter regarding the commission of offence of rape his grand-daughter who was aged about 09 years is pending in the Court. However, Jaspreet Singh, Mahinder, Ramesh Kumar and Goga who were resident of the same

village where the victim is residing, i.e. Islampur are pressurizing him to settle the matter and both the parties did not agree.

14. It is further alleged in the FIR that on 10.07.2023 at about 07:00 p.m., the said accused persons have inflicted injuries to the grandfather of the victim when he refused to settle the matter. The said assailants were armed with 'Datar' and sticks. The State has verified in the status report that there were four injuries on the person of the complainant in the said FIR and one of the injuries is grievous in nature.

15. *Prima facie* there is an evidence that the grand-father of the victim was being pressurized to withdraw that case where the victim is a child of tender age and the allegations against the petitioner are of sexual assault. Mahinder Pal who is father of the petitioner is also one of the accused in the said FIR No. 44 (Annexure P-3).

16. There being a *prima facie* evidence that the petitioner through his father and other accomplices had threatened the grand-father of the victim and even inflicted injuries to him, as such, the one of the conditions of the bail imposed by the Juvenile Justice Board has been violated, i.e. the applicant had induced threats to the family members of the victim.

17. The State counsel has also informed that the victim has supported the prosecution case when her statement was recorded on 23.08.2022. It is noticed that the said threat has been given after the victim has supported the prosecution case by inflicting injury to the grand-father of the victim. Considering the aforesaid circumstances, the order passed by the Additional Sessions Judge, cancelling the bail order of the petitioner is well justified. There is no illegal or irregularity in the impugned order. There is no

mis-carriage of justice has been caused to the petitioner. The equity is against the petitioner. As such, this Court does not find any ground to interfere under Section 482 Cr.P.C.

18. Consequent to the above discussion, the present petition has no merit and is accordingly dismissed.

19. Pending miscellaneous application (s), if any, shall also stand disposed of.

February 08, 2024

(HARPREET KAUR JEEWAN)

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JUDGE

Whether Speaking	Yes
Whether reportable	No