

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-48925-2024 (O&M)
Reserved on: 04.11.2024
Pronounced on: 06.11.2024

Vinod Kumar Phogat

... Appellant

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Partap Singh, Advocate,
Mr. Sahil Goel, Advocate,
Mr. Gourav Jangra, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG, Haryana.

Mr. Manoj Tanwar, Advocate
for the complainant.

HARPREET SINGH BRAR, J.

1. Present petition has been filed under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 for grant of pre-arrest bail to the petitioner in case bearing FIR No.205 dated 24.08.2024 under Sections 8, 12 & 17 of the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act') and Section 506 of the Indian Penal Code, 1860 (for

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short 'IPC'), registered at Police Station City Mahendergarh, District Mahendergarh.

2. Briefly, the facts, as alleged by the prosecution, are that the petitioner-accused, paternal uncle of the victim, visited her house on 25.09.2023 and stayed there for 3-4 days. During the said visit, the petitioner touched the victim's private parts. He also took photographs of her. The victim informed her mother of the same, who further threatened to kill her if she disclosed about the incident to anyone else. The petitioner visited the house of the victim again from 14.12.2023 to 16.12.2023 and during this visit as well, he molested the victim. The petitioner also watched her while taking bath and he might have taken her photographs. Yet again, the victim informed her mother, who ignored it. It is also claimed that mother of the victim was in an illicit relationship with the petitioner.

3. Learned counsel for the petitioner submits that the first incident, as alleged by the victim, occurred on 25.09.2023, however, on that day, the petitioner was in Charkhi Dadri, attending a family function at Jaatwas. As depicted by the pictures annexed as Annexure P-8 and P-9, the victim went out with her mother, her elder brother as well as the petitioner and no strain in the family dynamics is visible, making the allegations highly improbable. They also visited Jaipur as a family on 11.11.2023 and the trip was concluded happily, without any incident. The victim would not have voluntarily spent so much time with the petitioner, if he had sexually



assaulted her. He further contends that FIR (*supra*) has been registered by the victim at the instance of her father, notably with an unexplained delay of one year. The father of the victim had previously lodged an FIR on 23.12.2023 against the petitioner claiming that he had eloped with mother of the victim. In fact, mother of the petitioner was shunned out of her matrimonial home and had approached the petitioner for shelter. Subsequently, a cancellation report was filed. Pertinently, father of the victim has filed a petition seeking divorce (Annexure P-5), while her mother has filed a complaint under the Protection of Women from Domestic Violence Act, 2005 (Annexure P-6). Finally, mother of the victim has already been granted the concession of anticipatory bail by learned trial Court vide order dated 20.09.2024 (Annexure P-12).

4. Learned counsel for the complainant submits that the date of birth of the victim is 30.10.2007, as such she was a minor at the time of the incident. The petitioner is the paternal uncle of the victim, who also is in an illicit relationship with her mother. It was only due to the familial pressure that the victim could not report the matter, as such; the delay in registering the FIR (*supra*) is completely justified. The petitioner has sexually assaulted his niece and does not merit concession of anticipatory bail.

5. Learned State counsel submits that the statement of the victim under Section 183 of Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS') [erstwhile Section 164 of the Code of Criminal Procedure, 1973

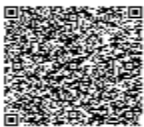


(for short 'Cr.P.C.')] stands recorded on 25.08.2024 (Annexure R-1). The victim was counselled and produced before the Child Welfare Committee, Narnaul on 29.08.2024. During course of the investigation, Sarkila, mother of the victim, suffered a disclosure statement, wherein she admitted to the allegations levelled against her and the petitioner. On 20.09.2024, a notice under Section 41(1)(b) of Cr.P.C. was served on the petitioner to join investigation for 24.09.2024, but he did not appear before the concerned police authorities.

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 the paternal uncle (*tau*) of the victim and has been accused of molesting her. A perusal of FIR (*supra*) indicates that specific allegations of grave nature have been leveled against the petitioner. Since the petitioner-accused is the paternal uncle of the victim, a minor girl, the matter becomes all the more serious, as there is a legitimate expectation to be unharmed in a fiduciary relationship such as this. Moreover, the victim has also claimed that the petitioner took photographs of her from his mobile phone, which are yet to be recovered.

7. In view of the above discussion and without further commenting on the matter, this Court is of the considered opinion that the petitioner does not deserve the concession of anticipatory bail. Accordingly, the present petition is dismissed.

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8. All the pending miscellaneous application(s), if any, shall stand disposed of.

9. Needless to say, 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.

06.11.2024
vishnu

[HARPREET SINGH BRAR]
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No