

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

212

CRM-M-56967-2023

Date of Decision: 06.03.2024

Gurlal Singh

.... Petitioner

Versus

The State of Punjab and another

.... Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: - Mr. Madan Sandhu, Advocate for the petitioner.

Ms. Aakanksha Gupta, AAG, Punjab.

NIDHI GUPTA, J. (ORAL)

The petitioner has filed the present 2nd petition under Section 439 of the Code of Criminal Procedure, 1973, for grant of regular bail in case FIR No. 237 dated 03.12.2022 registered under Sections 363 and 366 IPC (Offences under Sections 376, 366-A and 120-B IPC and under Sections 3 and 4 of the Protection of Children from Sexual Offences Act, 2012 added subsequently and offence under Section 366 IPC was deleted) at Police Station City Budhlada, Mansa, District Mansa.

FIR in the present case was registered on the basis of statement made by mother of the victim on 03.12.2022, which reads as under:-

“...I do household work. My parents residents of village Bloh in District Barnala. I was married to Jaspal Singh son of Babu Singh of Panjrai District Faridkot in the year 2004.

From our marriage, two girls were born and elder girl was Mamta Kaur, and the younger's name is Ramneet Kaur. My elder daughter Mamta Kaur is dead and Ramneet Kaur's date of birth is 3.5.2009. I had a domestic dispute with my husband, due to which we got divorced before Panchayat and i brought my daughter Ramneet Kaur with me. But then I got married to Tarsem Singh son of Pritam Singh resident of Budhlada. Now it's been about 3 years that we have been living on rent in BudhiadaCity and my daughter Ramneet Kaur lives with me at Budhlada. My daughter Ramneet Kaur is studying in 7th standard in a government school in the village Budhlada. My daughter used to talk on the phone with Gurlal Singh resident of Tarn Taran whose Mob.No. is 82647-20787 and yesterday on 2.12.2022 my daughter left home alone to go to school around 08:40 AM, but she did not return home, we are still searching for my daughter., but now after an enquiry we come to know that my daughter Ramneet Kaur has been taken away by Gurlal Singh resident of Tarn Taran under the pretext of marriage. Legal action should be taken against Gurlal Singh and my daughter Ramneet Kaur should be recovered... ”

Vide order dated 10.01.2024, the complainant was impleaded as respondent No. 2 in the present case and notice was also ordered to be issued to the complainant/respondent No. 2.

As per office report dated 30.01.2024, notice issued to

respondent No. 2 has been received back served personally with the report that '*she is unable to peruse the case as being illiterate. She has no objection if case will be decided against her*'.

Learned counsel for the 19-yr-old petitioner *inter alia* submits that date of incident is 02.12.2022 and FIR was registered on the basis of statement of mother of the victim on 03.12.2022. It is stated that however, the complainant and victim both have turned hostile as is evident from their respective testimonies (Annexures P-2 and P-1, respectively). It is submitted that clearly the allegations made against the petitioner were false. Further, it is submitted that the petitioner had earlier filed similar petition for grant of regular bail bearing No. CRM-M-48801-2023 which was dismissed as withdrawn by this Court vide order dated 03.10.2023 (Annexure P-10). The petitioner has been in custody since 04.12.2022 and moreover, material witness i.e. the victim and the complainant have already been examined by the learned trial Court and both of them have turned hostile. No useful purpose will be served by further detention of the petitioner in custody. Thus, it is prayed that the present petition may be allowed and the petitioner be released on regular bail.

Per Contra, learned counsel for the State has filed custody certificate dated 05.03.2024, which is taken on record, as per which the petitioner has been in custody as an undertrial for a period of 01 year, 02 months and 29 days. Learned counsel for the State vehemently opposes the prayer for grant of bail to the petitioner and submits that at the time of incident, the victim was only 13 years of age, and the victim in her

statement under Section 164 Cr.P.C. had supported the prosecution case. It is stated that it is only now, in their evidence before the learned trial court (Annexure P-1 and P-2), that the victim and the complainant have resiled from their earlier statements. It is contended that however, the hostile testimonies of the victim and the complainant (Annexure P-1 and P-2 respectively), are belied by the medical evidence on record as, the MLR and DNA report is positive, and semen has been detected on the exhibits submitted by the victim.

At this stage, reference may be made to a recent judgment of High Court of Karnataka in **Criminal Petition No. 13469 of 2023 (482) G. Raghu Varma vs. The State of Karnataka and another, decided on 19.02.2024**, wherein in para 7 it has been held as follows:-

“7. The object of POCSO Act is to protect minors from sexual abuse and not to criminalize the consensual relationship between two adolescents who had consensual sexual intercourse without knowing the consequences. The petitioner and the survivor come from the lower socio economic segment having limited access to information and knowledge, thus depriving them about the consequences in having consensual sexual intercourse. Though having sexual intercourse consensually with the minor is an offence under the POCSO Act, however, having regard to the facts and circumstances of the case, to secure the ends of justice, it would be appropriate to quash the impugned proceedings, otherwise, it would result in miscarriage of justice to the

survivor and the child.”

Having heard learned counsel for the parties, but without commenting on merits of the case, however, keeping in view the totality of the facts and circumstances of the case and the custody period undergone by the petitioner including the fact that the custody certificate reveals that there is no other case against the petitioner; moreover, material witness i.e. the victim and the complainant/mother of the victim stand examined and admittedly, both of the them have turned hostile; and conclusion of trial will take considerable time and no useful purpose would be served by further detention of the petitioner. Thus, the present petition is **allowed**.

The petitioner-Gurlal Singh S/o Satnam Singh, is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Chief Judicial Magistrate/Duty Magistrate, concerned.

However, it is made clear that nothing stated above shall be construed as an expression of opinion on the merits of the case.

06.03.2024
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(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No