

CRM-M-65477-2023 -1-

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-65477-2023
Date of decision: 15th February, 2024

Abdul Gaffar @ Monu ...Petitioner(s)

Versus

State of Haryana ...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Devender Kumar, Advocate for the petitioner.
Mr. Neeraj Poswal, A.A.G., Haryana.

MANISHA BATRA, J (ORAL):-

The present petition has been filed under Section 439 of Cr.P.C.
seeking regular bail in FIR mentioned below:-

FIR No.	Dated	Police Station	Sections
494	12.09.2023	Kotwali, District Faridabad	8 and 17 of Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act')

2. Brief facts of the case relevant for the purpose of disposal of this petition are that the aforementioned FIR was registered on the basis of a complaint lodged by the complainant 'I' (name withheld) alleging therein that her daughter 'B' (name withheld) aged about thirteen years and studying in 6th Class had come to the shop run by her on 12.09.2023 at about 6:30

PM. Then after informing the complainant, she went toward a nearby shop wherein cosmetics and toys etc used to be sold. She alleged that the petitioner and co-accused Faizuddin were present there and on the pretext of showing some stuff to her daughter, they took her inside the shop wherein accused Faizuddin sexually harassed the victim by pressing her breast while inserting his hands inside her t-shirt. Thereafter, he forcibly took her towards the toilets and again sexually harassed her. A case under Sections 8 and 17 of POCSO Act was registered. The statement of the victim under Section 164 of Cr.P.C. was recorded wherein she stated that the co-accused Faizuddin pressed her breast and kissed her lips and the present petitioner reached there and took her to other side of the shop wherein she was pushed inside the washroom by the co-accused Faizuddin and was again sexually harassed. Investigation proceedings were initiated. The petitioner was arrested on 13.09.2023. After completion of necessary investigation and usual formalities, challan under Section 173 of Cr.P.C. was presented in the Court.

3. The present petition has been filed by the petitioner on the grounds and it has been argued by his counsel that he has been falsely implicated in this case. There was no allegation against him in the FIR. Even in her statement which was recorded by the prosecutrix before legal-Aid-Prosecution counsel, no act had been attributed to him. She had made improvement in her statement recorded under Section 164 of Cr.P.C. The trial is likely to take time. He is real brother of the co-accused Faizuddin. It is argued by learned counsel for the petitioner that the prosecution version is

improbable, unnatural and false. The petitioner and co-accused are real brothers and it cannot be believed that one person would sexually harass any female in the presence of his own brother. The victim has made improvements in her statement recorded as different stages of the prosecution. He has argued that now in her statement as recorded before the learned trial Court, the victim has totally resiled from her previous version and has turned hostile. Therefore, it is argued that petitioner deserves to be given concession of bail.

4. On the other hand, learned State counsel has argued that there are serious allegations against the petitioner. Therefore, he does not deserve to be extended benefit of bail.

5. The petitioner is alleged to have abetted the offence of sexual assault by his brother Faizuddin. He is in custody since 13.09.2023. The victim who was the star witness of the case has not supported the prosecution version, as is explicit from a perusal of Annexure P-6 which is copy of sworn deposition recorded by her before the learned trial Court. Keeping in view the nature of evidence which has come on record. As well as nature of the subject offences, the period of incarceration of the petitioner and the attendant facts and circumstances of the case, I am of the considered opinion that the petition deserves to be allowed. Hence, the petition is allowed, the petitioner is ordered to be released on bail subject to his furnishing personal/surety bonds to the satisfaction of the Chief Judicial Magistrate/ Duty Magistrate concerned.

6. It is clarified that observations made hereinabove shall not be construed as an expression of opinion on the merits of the case.
7. Since the main petition has been allowed, pending application if any is rendered infructuous.

[MANISHA BATRA]
JUDGE

15th February, 2024
Parveen Sharma

1. Whether speaking/ reasoned : Yes / No
2. Whether reportable : Yes / No