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(204)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-52826-2023

Date of decision : 04.02.2025

MOHIT SHARMA

... Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Inderjit Sharma, Advocate
for the petitioner.

Mr. Harkanwar Jeet Singh, Asstt. A.G., Punjab.

Mr. S.K. Giberhan, Advocate
for the complainant.

JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 439 of Cr.P.C. is for the grant of regular bail to the petitioner in case FIR No.232 dated 22.12.2021 (Annexure P-1) registered under Sections 305, 306 and 506 IPC, 1860 read with Section 8 of Protection of Children from Sexual Offences Act, 2012 at Police Station Mukerian, Tehsil Mukerian, District Hoshiarpur.

2. The brief facts of the case are that one Ravi Kumar son of Prema Rai gave an application to the Senior Superintendent of Police, Hoshiarpur against the petitioner-Mohit Sharma with the allegations that his (complainant's) family consisted of his wife Pritma Rai and two minor sons namely, Rahul Rai aged 17 years and Krishna Rai aged 10 years. His elder son who was a student of Class X had committed suicide

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on the night intervening 12/13.07.2021 by hanging. His suicide note dated 12.07.2021 had been recovered in which the name of the petitioner-Mohit Sharma had been repeatedly mentioned. Information was supplied to the local police on 13.07.2021 and a post-mortem examination had taken place. However, despite the police having been informed about the suicide note, no action was taken. Thereafter, the messages on the mobile phone of the deceased were checked and it was found that the petitioner was having illicit relations with his son (deceased) and was sexually exploiting him (deceased). On account of this harassment and threat at the instance of the petitioner, his (complainant's) son remain depressed. Another boy had also called up his (complainant's) son and had used bad words and had also threatened him (deceased). On being asked as to from where he (other boy) had received his (deceased's) phone number, the boy had named the petitioner. Due to this reason, his (complainant's) son was under depression on account of the harassment and physical exploitation at the hands of the petitioner. Despite making repeated applications, no action had been taken by the Investigation Agency.

As multiple applications had been given by the petitioner, an inquiry was conducted. It was revealed that the deceased was a friend of Mohit Sharma (petitioner) who was pressurizing the deceased to establish unnatural relations with him. Due to the said harassment, the deceased had committed suicide on the night intervening night

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12/13.07.2021 by hanging. Thereafter, the instant FIR came to be registered.

3. The learned counsel for the petitioner contends that the allegations levelled against him are false, frivolous and vague. No *prima facie* case under Section 306 IPC etc. is made out. The case is based on hearsay evidence and there is no reference to an instigation, abetment or harassment on the part of the petitioner immediately before the date of the occurrence. One Varun Kumar @ Mithu who was having WhatsApp chats with the deceased had been exonerated during investigation. The suicide note is silent regarding the role of the petitioner. In fact, the WhatsApp chats would suggest a friendly relationship between the petitioner on the one hand and the deceased on the other. However, taking the allegations to be true, no offence under Section 8 of the POCSO Act was made out and the offence, if at all would be under Section 12 of the POCSO Act. An offence under Section 12 of the POCSO Act was bailable. As the petitioner was in custody since 29.06.2023 but only 05 of the 25 prosecution witnesses had been examined so far, the trial of the present case was not likely to be concluded soon and hence, the petitioner was entitled to the grant of bail.

4. On the other hand, the learned State counsel while referring to the reply dated 29.01.2024, he contends that as per the FSL Report of the mobile phones of the deceased and the petitioner, they were in close contact with each other. The minor deceased had illicit sexual relations

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with the petitioner but quite apparently, there appears to be an element of force which led to the establishing of the relationship. Ultimately, the deceased could not bear the pressure and therefore committed suicide. The deceased was less than 18 years old and the question of consent would not arise. Quite clearly, therefore, an offence under Section 8 of the POCSO Act was made out along with Section 305 and 306 IPC. The nature of the allegations did not entitle the petitioner to the grant of bail particularly when for an offence under Section 305 IPC, a sentence of life imprisonment could be imposed.

5. The learned counsel for the complainant while referring to some of the chats contends that there is clearly an element of pressure being applied by the petitioner upon the deceased to maintain relations. The same is borne out from the language used. Various missed calls were given when the deceased was not answering the calls of the petitioner which would show that the deceased felt pressure and therefore was not responding to the petitioner's call. With respect to the suicide note not naming the petitioner as an accused, it is his contention that the deceased might not have wanted to embarrass himself or his parents. Therefore, he has only stated in the suicide note that information be given to the petitioner. However, the attending facts and circumstances do not leave any manner of doubt that on account of the pressure exerted by the petitioner the deceased committed suicide. Even otherwise, the deceased was a juvenile and the question of any consent would not arise. He

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therefore contends that looking into the nature of the allegations levelled the petitioner was not entitled to the concession of bail.

6. I have heard the learned counsel for the parties at considerable length and examined the record.

7. The allegations levelled against the petitioner in the FIR and further substantiated by the messages exchanged between the petitioner and deceased certainly do not entitle the petitioner to the grant of bail. In fact, while some messages exchanged may amount to banter, the bulk of the messages are threatening and abusive in nature and would amount to exertion of pressure specially when the boy in question happens to be a minor. Since the deceased was a juvenile, therefore, the provisions of the POCSO Act have also been invoked in the present case. In fact, charges have been framed under Sections 305, 306 IPC and Section 8 POCSO Act. Sentence of life imprisonment can be imposed in case of conviction under Section 305 IPC. Further, 5 prosecution witnesses stand examined and 3 prosecution witnesses have been given up. Only 17 prosecution witnesses remain to be examined. Therefore, there is no delay in the trial.

8. In view of the aforementioned discussion, I find no merit in the present petition. Therefore, the same stands dismissed.

(JASJIT SINGH BEDI)
JUDGE

04.02.2025
JITESH

Whether speaking/reasoned:- Yes/No
Whether reportable:- Yes/No