

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(209)

CRM-M-20009-2020
Date of Decision: 27.10.2022

Devender

--Petitioner

Versus

State of Haryana

--Respondent

CORAM:- HON'BLE MR. JUSTICE RAJESH BHARDWAJ.

Present:- Mr. Aditya Sanghi, Advocate for the petitioner.

Mr. B.S. Virk, D.A.G., Haryana.

Mr. J.P. Sharma, Advocate for the complainant.

RAJESH BHARDWAJ.J (Oral)

The present petition has been filed under Section 439 Cr.P.C seeking the benefit of regular bail to the petitioner in case FIR No.8 dated 24.1.2020 under sections 376(2)N, 384, 506, 201 IPC, section 67-B of The Information Technology Act and section 8 of POCSO Act, registered at Police Station, Women Police Station, Narnaul, District Mahendergarh.

As per factual matrix, a complaint was lodged by the prosecutrix herself, wherein it was alleged that accused Devender i.e. the present petitioner had exploited her on the promise of granting employment and also demanded Rs.6 lakh for the same. The complainant gave him Rs.4 lakh in the year 2018. On her demand to return the money the same was not accepted by the petitioner. It was further alleged that on the pretext of getting her employment, petitioner/accused made physical relations with her and thus sexually exploited her. He also threatened her to abduct her daughter and to kill her.

On the basis of the allegations FIR in question was lodged and the investigation commenced. The statement of the prosecutrix under section 164 Cr.P.C was recorded on 4.3.2020. The petitioner was arrested on 10.3.2020. He approached the court of Addl. Sessions Judge, Narnaul for grant of bail, however, after hearing the parties, the same was declined vide order dated 19.6.2020. Aggrieved by the same petitioner has approached this court for grant of bail.

This court vide order dated 25.9.2020 granted interim bail to the petitioner by observing that the allegations in the FIR pertain to the year 2018, whereas the FIR in question was registered after about two years i.e. on 24.1.2020.

Learned counsel for the petitioner vehemently contends that the petitioner has been falsely implicated in the present case. He submits that complainant in the present case is more than 40 years of age and is mother of two children. It is submitted that allegations against the petitioner were totally fabricated and pertain to the year 2018. Counsel submits that prosecutrix is a matured lady, who could not have been exploited the way it had been alleged by her. He submits that even if the allegations are taken to be true the relationship between the complainant and petitioner would be consensual. He submits that false allegations of sexual assault on the minor daughter of the complainant have been levelled against the petitioner pertaining to year 2018 so as to implicate him in a heinous offence under the POCSO Act. He submits that evidently there was not even a whisper regarding any allegation against the petitioner of committing any sexual assault on the minor daughter of the complainant in the FIR. It is submitted

that by due deliberations statement of the prosecutrix was recorded on 4.3.2020 wherein for the first time allegations were levelled against the petitioner and on the strength of the same offence under the POCSO Act was added against the petitioner. Counsel submits that after taking into consideration all the facts petitioner was granted interim bail by this court. He submits that during this period learned Trial Court has examined majority of the witnesses including the prosecutrix and her minor daughter. Counsel submits that petitioner never tried to influence the witnesses and thus he has not misused the concession of interim bail. Counsel submits that petitioner has no criminal antecedents and he deserves to be granted the benefit of bail.

Learned counsel for the complainant has vehemently opposed the submissions made by counsel for petitioner. He submits that there are specific allegations against the petitioner. He further submits that petitioner does not deserve the concession of bail as he has committed a heinous offence under the provisions of POCSO Act.

On the other hand, learned State counsel submits that there are specific allegations against the petitioner. He submits that petitioner was named in the FIR, however, allegations pertaining to offence under the POCSO Act were not levelled against the petitioner in the FIR but thereafter when the statement of the minor daughter of the prosecutrix was recorded under section 164 Cr.P.C after about a month, the allegations pertaining to POCSO Act were made. He submits that out of total 16 prosecution witnesses 8 already stand examined including the prosecutrix and her daughter. He further submits that as per information

provided to him petitioner is not involved in any other case.

I have heard learned counsel for the parties at length and have gone through the records carefully.

Admittedly, petitioner was granted interim bail vide order dated 25.9.2020 by observing that the occurrence in question had taken place two years before registration of the FIR. Out of the total 16 prosecution witnesses, 8 already stand examined by the learned Trial Court. There is nothing on record to show that petitioner has misused the concession of interim bail or tried to influence the prosecution witnesses. There is nothing on record to show that petitioner has any criminal antecedents. The veracity of the allegations levelled against the petitioner would be assessed by the Trial Court only upon conclusion of the trial. This court would refrain itself from commenting on the merits of the case, as the allegations and counter allegations would be assessed only after evaluation of the complete evidence to be led by both the sides before the Trial Court. The trial would take sufficiently long time in its conclusion.

In the totality of facts and circumstances and without making any observation on merits, present petition is allowed. Petitioner be enlarged on bail on his furnishing fresh bail/surety bonds subject to the satisfaction of Trial Court/Duty Magistrate, concerned. Nothing stated herein shall be treated as an expression on the merits of the case.

(RAJESH BHARDWAJ)
JUDGE

27.10.2022

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