

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**Criminal Misc. No. M-40029 of 2015
Date of decision: 06.04.2016**

Sandeep

..Petitioner

Versus

State of Haryana

..Respondent

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspapers may be allowed to see judgment? Yes/No**
- 2. To be referred to reporters or not? Yes/No**
- 3. Whether the judgment should be reported in the Digest? Yes/No**

Present: Mr. Anshumaan Dalal, Advocate
for the petitioner.

Ms. Trishanjali Sharma, AAG, Haryana
for the respondent – State.

Daya Chaudhary, J. (Oral)

The present petition has been filed under Section 439 Cr.P.C. on behalf of petitioner-Sandeep for grant of regular bail in FIR No.26 dated 14.02.2015 registered under Sections 363, 366-A, 216, 376-D, 506 read with Section 34 of Indian Penal Code and Section 4/6 of the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act') at Police Station Line Par, Bahadurgarh.

Learned counsel for the petitioner submits that the aforesaid FIR was registered on the basis of statement made by the mother of the victim. The statement of victim was also recorded under Section 164 Cr.P.C. wherein she has stated that she wanted to remain

with her husband and had left her house as per her own will. As per statement of the victim, she was more than 18 years of age at the time of marriage as reflected in the certificate issued by Arya Samaj Vaidik Mandal, New Delhi. Learned counsel further submits that the victim was having love affair with co-accused-Naveen and went with him as per her choice. Learned counsel also submits that not only the statement of victim has been recorded before the trial Court but the statement of complainant, who is mother of the victim, has also been recorded and both of them have not supported the case of the prosecution. Learned counsel also submits that the offence under POCSO Act has been added because of the age mentioned in the birth certificate whereas the date of birth mentioned in the school leaving certificate is different from birth certificate, which is a matter of evidence as to which date of birth is correct.

Learned State counsel submits that the age of the victim was less than 18 years at the time of occurrence and the birth certificate is more authentic than the school leaving certificate as nothing has been said as to how different date of birth was mentioned in the school leaving certificate. Learned State counsel opposes grant of regular bail to the petitioner but has not disputed the fact that the victim as well as the complainant have not supported the case of the prosecution.

Heard arguments of learned counsel for the parties and have also perused the allegations levelled in the FIR as well as the

statements of the victim and the complainant, copies of which have been supplied by learned counsel for the petitioner.

Admittedly, the case of the prosecution has not been supported by the victim as well as the complainant, who is her mother. The date of birth mentioned in the birth certificate as well as in the school leaving certificate is disputed question of fact, which cannot be considered at this stage. As per marriage certificate, the victim was more than 18 years of age and in case, the birth certificate is considered even then also, she was 2 months' less than 18 years . The victim has specifically stated in her statement recorded under Section 164 Cr.P.C. as well as the statement recorded before the Court that she was married and was never kidnapped and no rape was committed upon her.

Keeping in view the submissions made by learned counsel for the petitioner and the fact that the victim as well as complainant, who is her mother, have not supported the case of the prosecution and the petitioner is in custody since 17.06.2015, the present petition is allowed and the petitioner (Sandeep) is directed to be released on regular bail subject to furnishing bail/surety bonds to the satisfaction of the trial Court.

06.04.2016
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(DAYA CHAUDHARY)
JUDGE