

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

**Criminal Misc. No. M-659 of 2016
Date of decision: 06.04.2016**

Naveen

..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-Naveen 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 petitioner and daughter of the complainant solemnized their marriage but the same was not liked by the parents of the girl and because of that reason, the mother of the victim made a complaint on the basis of which, the aforesaid FIR was registered. The victim was more than 18

years of age at the time of alleged occurrence and no offence is made out against him as mentioned in the FIR. Learned counsel further submits that the marriage certificate was got prepared as the petitioner as well as daughter of the complainant wanted to file a protection petition after solemnizing marriage but the same could not be filed as they were intercepted by the Police. Learned counsel also submits that the victim was having love affair with the petitioner and she went with him as per her choice and without any pressure. 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 also submits that not only the statement of the victim has been recorded before the trial Court but the statement of complainant, who is mother of the victim, has also been recorded. Both of them have not supported the case of the prosecution. The victim has stated in her statement recorded under Section 164 Cr.P.C. that she was never kidnapped by the petitioner and no rape was committed upon her. The petitioner is in custody since 08.05.2015.

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 by the petitioner 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 08.05.2015, the present petition is allowed and the petitioner (Naveen) 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