

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

CRM-M-24120-2018

Date of decision:-20.8.2018

Sanjay @ Yogender

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Vikas Mohan Gupta, Advocate
for the petitioner.

Mr.Gaurav Bansal, AAG, Haryana.

H.S. MADAAN, J.

This petition for regular bail has been filed by petitioner – Sanjay @ Yogender – an accused in FIR No.234 dated 17.6.2017, under Sections 363, 366-A IPC (later on Sections 323/376, 120-B IPC and Section 6 of the Protection of the Children from sexual Offences Act, 2012 were added), registered with Police Station Sadar, Sonipat, District Sonipat.

Briefly stated, the prosecution story is that on 14.6.2017 at about 7:00 a.m., the prosecutrix (name not being mentioned to conceal her

identity and referred to as '*the victim*') aged about 15 years had left home without telling anybody. Her parents searched for her but she could not be located. Then her father Islam son of Akhtar, resident of village Dewru, Police Station Sadar, Sonipat reported the matter to police expressing a doubt that Sanjay @ Yogender son of Rajbir, resident of Mohalla Bajria, Aanwla, District Barreilly (present petitioner) and Rakesh had taken away his daughter by alluring her on the ground of performing marriage.

On the basis of such statement of complainant Islam, formal FIR was registered. The investigation in the case started. Accused Sanjay @ Yogender was arrested on 11.12.2017 and presently he is in judicial custody. He had filed an application for regular bail in the Court of Sessions, which was declined by Additional Sessions Judge/Special Judge, Sonipat vide order dated 25.4.2018, as such, he has approached this Court with the same request.

Notice of the petition was given to respondent – State and counsel representing the State has put in appearance.

I have heard learned counsel for the parties besides going through the record.

Learned counsel for the petitioner has stated that as a matter of fact, the prosecutrix/victim had attained the age of majority at the time of alleged incident; that she had got married with the petitioner against the wishes of her family members; that a marriage certificate was also got issued by the priest, who had performed the marriage; that the custody of the prosecutrix was illegally and forcibly taken away by relatives of the prosecutrix; that the petitioner had also got search warrants issued to

recover the prosecutrix from illegal custody of her family members and that the FIR has been registered on false allegations, as such, the petitioner be granted regular bail.

Whereas, learned State counsel submits that the prosecutrix was a minor and she was kidnapped by the petitioner along with one Rakesh by giving allurements of marriage; that the consent of a minor is no consent in the eyes of law. Therefore, the petitioner is not entitled to bail.

After hearing the rival contentions, I find that in the status report filed on behalf of the respondent – State in the form of affidavit of DSP, Detective, Sonapat, it is contended that during the course of investigation, Headmaster, Government Middle School, Devru was approached, who issued a certificate disclosing that as per the school record, the date of birth of the prosecutrix is 5.3.2003; that statement of prosecutrix was got recorded under Section 164 Cr.P.C. by Judicial Magistrate; that she was got medico legally examined; furthermore she was got examined with regard to her approximate age and after conducting dental anatomy test, her estimated age was opined by the doctor to be between 14-16 years, however, no record was found to be available with the Registrar, Births and Deaths, Sonapat regarding the date of birth of the victim.

Learned counsel for the petitioner referring to the statement of complainant regarding number of his children and their respective ages, by the process of calculation has tried to come up with an argument that since the prosecutrix was one year elder to Javed with date of birth 18.1.2000, then in June, 2017, she was aged more than 18 years and as per

Aadhar card her date of birth is 1.1.1998 and the evidence relied upon by the prosecution is fabricated and false.

However, I am of the view that only during the trial it can be found that as to what was the actual age of the victim at the time of incident. The prosecution is relying upon school record of the victim as well as the medical test opinion in support of its contention that the prosecutrix was minor at that time. Whereas the method adopted by the counsel for the petitioner is by calculations and process of elimination. Therefore, it cannot be said at this stage that prosecutrix had attained the age of majority at the time of incident. The allegations against the petitioner are quite serious and grave. The trial against him is going on, which is likely to be concluded in near future. The apprehension expressed by the State counsel that if petitioner is granted bail, there is every likelihood to his absconding and even tampering with the prosecution evidence cannot be brushed aside lightly.

Therefore, finding no merit in the petition, the same stands dismissed.

20.8.2018
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No