

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

**Crl. Misc. No. M-33951 of 2018
Date of decision : 17.09.2018**

Daddu

... Petitioner

versus

State of Punjab & Anr.

... Respondents

CORAM:- HON'BLE MRS. JUSTICE ANITA CHAUDHRY

**Present: Mr. Shivoy Dhir, Advocate
for petitioner.**

**Mr. Jagmohan Ghumman, DAG Punjab.

ANITA CHAUDHRY, J.

The petitioner is seeking regular bail in FIR No. 224 dated 18.12.2015, registered under Sections 212, 363, 366-A and 376 IPC and Sections 3 and 4 of Protection of Children from Sexual Offence Act, 2012 (for brevity, POCSO) at Police Station Division No.6, Industrial Area, Ludhiana.

The FIR was registered by respondent No.2 when his minor daughter aged 15 years went missing since 14.12.2015. Later, on his statement about illegal detention by the petitioner, a raid was conducted and prosecutrix was recovered from the house of the petitioner on 28.12.2015. Her medical was got done. She complained of sexual assault by the petitioner. The petitioner was not nabbed. Challan was filed against co-accused Nankan.

The petitioner was arrested and is in custody since 21.08.2017.

Learned counsel states that it was a case of consent and the

prosecutrix of her own had come to the house of the petitioner and stayed there. According to him, the prosecutrix had claimed herself to be major and there is no evidence to show that she was minor. He further submits that the petitioner is in custody for more than a year and trial will take long.

Learned State counsel has pointed that the petitioner was declared a proclaimed offender. According to him, the prosecutrix is a minor and the plea of consent pales into insignificance.

A perusal of paper book reveals that there is no mention in it that the petitioner was declared a proclaimed offender in this case, rather it was stated evasively that the petitioner has not been declared a proclaimed in any other case. There is concealment of fact.

The allegations against the petitioner are of detaining and sexually abusing a minor girl . The ossification report reveals the age of prosecutrix between 14 to 16 years. As per FSL report, spermatozoa was detected on vaginal swabs. It is for the trial Court to conclude whether the prosecutrix was minor or it was a case of consent. The trial has already been prolonged as the petitioner was arrested after more than one and a half year of the occurrence as he was avoiding his arrest. Considering the gravity of the offence committed by him, no case for bail is made out. The petition is dismissed.

Whatever is said hereinabove is without prejudice to the case of the petitioner on merits.

September 17, 2018
Jiten

(ANITA CHAUDHRY)
JUDGE

Whether speaking/ reasoned

Yes/ No

Whether reportable

Yes/ No