

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Misc. No. M-51022 of 2018 (O&M)
Date of decision : December 18, 2018

Bharat

....Petitioner

versus

State of Haryana

....Respondent

Coram: Hon'ble Mr. Justice Fateh Deep Singh

Present : Mr. Sushil Jain, Advocate, for the petitioner
Mr. Baljinder Virk, DAG, Haryana for the State

Fateh Deep Singh, J. (Oral)

CRM-44950-2018

The present application is in compliance of earlier orders dated 10.12.2018. The same is allowed and orders annexed therewith as Annexure P/5 are taken on record. CRM stands disposed of.

CRM-M-51022-2018

This is second regular bail application under Section 439 Cr.P.C. of accused petitioner Bharat filed in case bearing FIR No. 1 dated 1.1.2018, under Sections 354-D, 376, 506 IPC and under Sections 4 and 12 of the Protection of Children from Sexual Offences Act, 2012, Police Station Women, Sonipat.

The facts that are highlighted are that the petitioner who is aged around 25 years used to stalk and followed the prosecutrix who is aged around 16 years and 9 months (the date of birth being 18.4.2001 as per school certificate). During such encounters the petitioner is alleged to have been threatening the prosecutrix either to accompany him for an outing and else he would finish her family members. The accused had even threatened the prosecutrix to marry him else he would upload her pictures on the social network. It is also alleged that in September, 2017 when the parents of the girl engaged her somewhere else, the accused raped her against her wishes leading to the registration of the present case on the complaint of the girl leading to arrest of the accused on 1.1.2018.

Mr. Sushil Jain, learned counsel for the petitioner inter-alia contends that the girl is a major, her date of birth in fact is 12.4.1999 and that initially no allegation of rape has cropped up and subsequently in her statement under Section 164 Cr.P.C. she has levelled those allegations. It is further argued that there is no medical evidence to support the prosecution story of allegation of alleged rape and the petitioner is behind the bars since a long time. It is further contended that the prosecutrix nor her father has supported the prosecution story and thus prayed for grant of bail.

The learned State counsel has vehemently argued and opposed the grant of bail on the grounds that a minor girl has been raped and question of age of the prosecutrix is subject matter of trial and the school certificate shows her to be a minor and if allowed bail, the petitioner might

influence the remaining witnesses as they have already stifled the trial.

Going through the arguments made before this Court, the question as to the age of the prosecutrix is a matter to be adjudicated through evidence by the trial court to satisfy the claim and counter claim of the two sides. The prosecutrix in her stand under Section 164 Cr.P.C. has levelled allegations of rape against the petitioner which was recorded on the day FIR was got registered are matters of much significance. The prosecutrix is a school student and the learned counsel for the petitioner could not convince this Court why she shall make false allegation against the petitioner. Rather what ensued from the arguments and the proceedings at the trial is reflective of the influence which is being wielded by the accused while in custody and if allowed bail the apprehension of the learned State counsel that they would stifle the trial certainly is not unfounded. In the light of the seriousness of the allegations and that the trial is under way, the remaining witnesses of the prosecution are yet to be examined, no cause for grant of bail is made out. The present petition is thus dismissed.

December 18, 2018

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**(Fateh Deep Singh)
Judge**

Whether speaking/reasoned ?

Yes/No

Whether Reportable ?

Yes/No