

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Misc. No. M-4991 of 2019 (O&M)
Date of decision : April 08, 2019

Diwakar

....Petitioner

versus

State of Haryana

....Respondent

Coram: Hon'ble Mr. Justice Fateh Deep Singh

Present : Mr. Punit Malik, Advocate, for the petitioner
Ms. Dimple Jain, AAG, Haryana for the State

Fateh Deep Singh, J. (Oral)

The allegations against petitioner Diwakar in this regular bail application have been levelled by the cousin sister of a minor girl aged around 16 years.

In her allegations, the complainant has alleged that the victim was working as a maid servant in the house of the petitioner and that on 5.4.2017, the petitioner is alleged to have taken the victim after enticement and after visiting various places has defiled her during this period leading to the registration of the present case and arrest of the petitioner on 16.4.2017.

Mr. Punit Malik, counsel for the petitioner inter-alia contends

that the alleged victim was only a domestic help and was neither ravaged nor taken away from the lawful guardianship of the petitioner and has sought to place reliance on statement recorded under Section 164 Cr.P.C. Annexure P/3 arguing that the petitioner is behind the bars since a long time.

Learned State counsel assisted by ASI Narpal Singh, P.S. Sushant Lok, Gurugram with all fairness has conceded that neither in statements under Section 161 Cr.P.C. and under Section 164 Cr.P.C. the girl has supported the version of the prosecution nor there is an adverse report of the Forensic Science Laboratory but has stoutly opposed the grant of the bail on the grounds of heinousness of the offence and that the trial is under way.

Appreciating the submissions, the own admitted stand of the State that the victim has nowhere supported the prosecution story much less there is any corroboration to this allegation of defilement of the victim by the petitioner have come about in the report of FSL. Thus, in view of this peculiar situation, a debatable issue having arisen over the very applicability of Section 4 of the Protection of Children from Sexual Offences Act, 2012 and Sections 363/366-A IPC which is subject matter of trial. The petitioner is behind the bars since a long time. Culpability, if any, shall be determined at the time of trial which is not likely to be concluded in near future and thus, no purpose will be served by retaining the petitioner in jail. Accordingly, he is ordered to be released on regular bail to the satisfaction

of learned Chief Judicial Magistrate/Duty Magistrate, Gurugram.

The present petition stands disposed off accordingly.

The observations made herein above shall have no bearing on the merits of the case as these are purely for the disposal of the present bail application.

April 08, 2019
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(Fateh Deep Singh)
Judge

<i>Whether speaking/reasoned ?</i>	<i>Yes/No</i>
<i>Whether Reportable ?</i>	<i>Yes/No</i>