

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

CRM-M-10353 of 2019.

Decided on:- October 17, 2019.

Virender Gupta.

.....Petitioner.

Versus

State of Haryana.

.....Respondent.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. Satbir Rathore, Advocate
for the petitioner.

Ms. Gaganpreet Kaur, A.A.G., Haryana.

HARI PAL VERMA, J. (Oral)

Prayer in this petition filed under Section 439 Cr.P.C. is for grant of regular bail to the petitioner in FIR No.211 dated 20.05.2018 under Section 506 IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (for short, the POCSO Act) registered at Police Station New Colony, Gurugram, District Gurugram.

The aforesaid FIR was registered at the behest of the prosecutrix claiming herself to be about 16 years of age. As per the FIR, the prosecutrix was doing household work. One Surender Malto is resident of her neighbouring village in Jharkhand and she was brought by him about three years ago from here parental house. He left the prosecutrix at the house of Prem Sagar son of Sham Lal for doing household work as a servant, where

she used to do sweeping broom, to wash clothes and to clean the utensils. She was kept as their child. Prem Sagar told her that Mani Mishra takes all her salary and never paid anything to her. One boy, namely, Arun @ B.K. (present petitioner) used to come to the house of Prem Sagar for repairing wooden chairs. He (petitioner) took her (prosecutrix) to her room and did wrong thing with her without her consent and threatened her that in case she will tell about it to anybody, he will kill her. He did wrong things with her many times for about one year.

Learned counsel for the petitioner has argued that the petitioner is in custody since 23.05.2018 and charge in the case was framed against the petitioner on 05.09.2018. As per the medical report dated 02.07.2018 (Annexure P-2) when all things were considered together including the general physical, dental and radiological findings, the medical board has given an opinion that the prosecutrix is aged between 17 years to 19 years. He states that the prosecutrix was major and the petitioner has falsely been implicated in the case. Further, she has not supported the prosecution case in her cross-examination while appearing in the witness box before the trial Court.

Learned State counsel has produced photocopy of the cross-examination of the prosecutrix, wherein she has stated that she wanted to protect her brother Dilip from any criminal proceedings and, therefore, she concocted a false story to implicate the petitioner in the case.

I have heard learned counsel for the parties.

The petitioner is in custody since 23.05.2018. Total 17 witnesses have been cited by the prosecution, whereas only 9 witnesses have been examined so far. The prosecutrix has been examined before the trial Court, but she has not fully supported the case of the prosecution, rather, at one stage, she has deposed that she has concocted a false story so as to implicate the petitioner in the case. The relevant part of her cross-examination is reproduced as under:

“It is correct that I had wanted to go back to Jharkhand after taking my salary and money from Prem Sagar and Sheshmani Mishra and both of them refused to give me my money back. It is correct that Manisha is my friend and she was living in Faridabad who advised me to give complaint in the police so that I could go back to Jharkhand and I got registered present case. Anima Mishra is wife of Sheshmani Mishra and she also instigated me to lodge the present case. It is correct that I also wanted to save my brother Dilip from any criminal proceedings for selling me to Suresh Mehto therefore I concocted a false story to implicate the accused in this case.”

In view of the fact that the prosecutrix has not fully supported the prosecution case and conclusion of trial will take sufficient long time, this Court finds that the petitioner deserves to be admitted on bail.

Accordingly, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing adequate bail and surety bonds to the satisfaction of learned trial Court.

However, it is made clear that in case the petitioner influences the remaining prosecution witnesses in any manner directly or indirectly, the prosecution shall be at liberty to seek cancellation of his bail.

The observations made hereinabove shall not be construed as an expression of opinion on the merits of the case and the trial Court shall decide the case without being influenced with these observations in any manner.

October 17, 2019
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned:	Yes
Whether Reportable:	No