

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

217

CRM-M- 45300-2018

Date of Decision:16.01.2019

Abhishek

.....Petitioner

Versus

State of Haryana

.....Respondent

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

**Present: Mr.Anil Kumar Bhardwaj, Advocate,
for the petitioner.**

Ms. Mahima Yashpal, A.A.G., Haryana.

**Mr. Ankit Chowdhri, Advocate
for the complainant.**

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.56 dated 11.05.2018 under Sections 376(2)(N), 354(D), 365/427/452/506, 34 IPC and Section 6 of the POCSO Act, registered at Women Police Station Rohtak.

Learned counsel for the petitioner has argued that the petitioner is in custody since 22.05.2018. He refers to the FIR and states that a bare perusal of the contents of the FIR does reflect that it contains two different parts. In one of the part, the victim has made allegations against Vishawjeet, who has already been granted interim bail by this Court in CRM-M No.26939 of 2018, with whom, she had friendship since May, 2015. In the IInd part of FIR, as per statement of the prosecutrix/complainant, she has come with contact of petitioner in the year, 2015 itself, when she had joined the part time job in Asclepius Wellness Private Limited for Ayurvedic medicines, where the petitioner had taken her

mobile number from someone and he talked with the complainant. The co-accused Vishawjeet, with whom she has friendship, got married in 2017. The petitioner is stated to have developed relations with the prosecutrix somewhere after October, 2017. He states that date of birth of the complainant is 23.05.1999 and in this manner she had attained majority on 23.05.2017, whereas physical relations allegedly developed somewhere in October, 2017 and on the relevant date, she was already major. Therefore, the provision of POCSO Act are not applicable in the case. He states that the petitioner and the complainant were known to each other for a long time and even if there were physical relations between them, these were consensual.

On the other hand, learned State counsel on instructions from ASI Sarita states that the FIR was registered under Section 376(2)(N) as well. Therefore, the petitioner cannot take the benefit of non-applicability of POCSO Act in his case. The allegations against the petitioner are serious and, therefore, he is not entitled for bail.

Learned counsel for the complainant states that the allegations against the petitioner are serious, which dis-entitles him for grant of bail.

I have heard learned counsel for the parties.

A perusal of the FIR does reflect that it has two different parts and interestingly, in the FIR, the petitioner as well as other co-accused Vishawjeet came in contact of the complainant in the year, 2015 itself and the friendship continued till 04.05.2018. During this period, though they have allegedly developed relations but no such complaint was made, therefore, this Court finds that culpability of the petitioner is yet to be established during the course of trial.

Considering the fact that the petitioner is in custody since 22.05.2018 and trial in the case will take sufficient long time, the present petition is allowed and the petitioner is admitted on regular bail, subject to furnishing of his bail bonds/surety bonds to the satisfaction of trial Court.

It is made clear that the petitioner shall not extend any threat or pressure on the complainant directly or indirectly in any manner. In case, it is found that the petitioner is extending any threat, the prosecution shall be at liberty to seek cancellation of his bail in this case.

January 16, 2019
anju

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No