

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Date of decision : January 31, 2019

1. Criminal Misc. No. M-46008 of 2018 (O&M)

SushilPetitioner
versus

State of HaryanaRespondent

2. Criminal Misc. No. M-61991 of 2018 (O&M)

MehardinPetitioner
versus

State of HaryanaRespondent

Coram: Hon'ble Mr. Justice Fateh Deep Singh

Present : Mr. Rajesh Goyal, Advocate for
petitioner-Sushil

Mr. Pawan Kumar Hooda, Advocate for
petitioner-Mehardin

Mr. Baljinder Virk, DAG, Haryana for the State

Fateh Deep Singh, J. (Oral)

Since both these regular bail applications one by accused-petitioner Sushil and another by accused-petitioner Mehardin have arisen in the same very FIR and on account of consanguinity of facts are being taken up together for disposal.

The brief facts and allegations are as follows:-

The complainant grand-mother of the victim a girl aged around 16 years student of 10th class on 15.6.2018 eloped and thereafter was got recovered on 22.6.2018 from the house of accused Sushil. The girl made a statement refusing to undergo medico legal examination and claimed that she had gone to the house of Mehardin for stitching clothes where she was served with milk and then was taken to a hotel where three boys misbehaved with her in a drunken state. The accused-petitioners happened to be those persons leading to their arrest on 23.6.2018.

Mr. Rajesh Goyal, Advocate for petitioner-Sushil and Mr. Pawan Kumar Hooda, Advocate for petitioner-Mehardin have argued that co-accused non-applicant Parveen has been allowed bail by this Court vide orders dated 13.12.2018 and that the girl had left her home on her own and there is no allegations against Sushil and only named Mehardin who was in an intoxicant state at the hotel arguing that there was only platonic relationship of the prosecutrix with Sushil and there is no evidence to establish the applicability of provisions of Section 8 of the Protection of Children from Sexual Offences Act, 2012 or Sections 363, 366-A IPC.

Mr. Virk, learned State counsel has stoutly opposed the relief being sought by the counsel for the petitioners on the grounds that a young girl has been eloped, enticed and taken away and the conduct of the accused at the hotel is itself suggestive of commission of offence and the case of the petitioners is distinguishable from the co-accused Parveen who has been

allowed bail.

Both the petitioners are behind the bars since almost seven months which is duly conceded to at the bar by the learned State counsel and that the girl refused to give any statement under Section 164 Cr.P.C. implicating any of these accused and had even declined to undergo medico legal examination. To the specific query of the Court, learned State counsel could not highlight any evidence to show the commission of offence under Section 8 of the POCSO Act. Even attraction of Sections 363 and 366-A IPC is a debatable issue as the girl in the light of the allegations has left her home on her own. Keeping in view the principle of parity and culpability if any shall be determined at the trial which is not likely to be concluded in near future, no purpose will be served by retaining the petitioners in jail. Accordingly, both the petitioners are ordered to be released on regular bail to the satisfaction of learned Chief Judicial Magistrate/Duty Magistrate, Panipat.

The present petitions stand 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 applications.

January 31, 2019

'tiwana'

**(Fateh Deep Singh)
Judge**

Whether speaking/reasoned ?

Yes/No

Whether Reportable ?

Yes/No