

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Misc.-M-23624 of 2019
Date of Decision: November 01, 2019.

KusumPetitioner
versus
State of HaryanaRespondent

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

Present: Mr.Ashishek Singh, Advocate, for the petitioner.
Ms.Priyanka Sadar, AAG, Haryana.

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Hari Pal Verma, J. (Oral)

Petitioner has filed this petition under Section 439 Cr.P.C. for grant of regular bail in case FIR No.608 dated 18.09.2018 registered under Sections 363, 365, 366-A, 370-A, 376-D, 34 IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012 and Section 3 of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989, at Police Station Samalkha, Panipat.

Learned counsel for the petitioner submits that the petitioner is in custody since 06.12.2018. The offence under the POSCO Act has wrongly been invoked as in the ossification test of the prosecutrix, she was found to be between the age 18 to 20 years. Learned counsel has referred to the statement of the prosecutrix recorded under Section 164 Cr.P.C. and submits that the prosecutrix has nowhere made allegations against the petitioner. He further states that even in the first counseling of the prosecutrix held on 04.10.2019 with the Child Welfare Committee, Panipat, she has not named the petitioner and it is in the 2nd and 3rd counseling held on 26.10.2018 and 06.11.2018, the petitioner has been named. Now, the prosecutrix has further changed her version and while appearing as prosecution witness, has not

father of the prosecutrix have also not supported the case of the prosecution. He refers to a judgment dated 08.08.2018 in the case of *Criminal Revision P-195/2018 (Shweta Gulati and another versus The State Government of NCT of Delhi)*, to contend that when in the ossification test, the age of the victim is determined as 17-19 years, while applying the margin of error principle of two years on either side, the age could be between 15 to 21 years and in the present case even if the margin of error principle is not taken on lower or higher side, in the ossification test, the age of the victim is found to be between 18 to 20 years. The provision of POSCO Act is not attracted.

Learned State counsel does not dispute the custody period of the petitioner. However, she states that the prosecutrix was minor, though in the FSL report dated 07.12.2018, it is opined that semen could not be detected on exhibit-1a (Slides) and exhibit 1b (Vaginal swab).

I have heard learned counsel for the parties.

Petitioner is in custody since 06.12.2018. The prosecutrix and her parents have not supported the case of the prosecution. In the FSL report dated 07.12.2018 obtained from the Forensic Science Laboratory, Madhuban, it is opined that semen could not be detected on exhibit 1a and exhibit 1b. In the ossification test, the age of the prosecutrix is found to be between 18 to 20 years.

Considering the fact that the petitioner is in custody from 06.12.2018 and trial in this case will take sufficient long time, no useful purpose will be served to keep the petitioner in custody, more particularly when the prosecutrix and her parents have not supported the case of the prosecution, I deem it appropriate to release the petitioner on regular bail.

Accordingly, the present petition is allowed and the petitioner is

admitted on regular bail, subject to her furnishing bail bonds/surety bonds to the satisfaction of the trial Court.

However, it is made clear that the observations made herein-
above shall not be construed as any expression on the merits of the case.

November 01, 2019 <i>mohinder</i>		(HARI PAL VERMA) JUDGE
Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No