

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

CRM-M-28470 of 2019 (O&M)

Decided on:- October 18, 2019.

Sagar.

.....Petitioner.

Versus

The State of Haryana.

.....Respondent.

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

Present:- Mr. Arvind Bansal, Advocate for the petitioner.

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

Mr. Sandeep Malik, Advocate for the complainant.

HARI PAL VERMA, J. (Oral)

CRM-31765-2019

The documents Annexures P-8 to P-11 are taken on record
subject to all just exceptions.

CRM stands disposed of.

CRM-M-28470-2019

Prayer in this petition filed under Section 439 Cr.P.C. is for grant
of regular bail to the petitioner in FIR No.183 dated 06.11.2018 under
Sections 363, 366, 376 and 342 IPC and Section 6 of the Protection of
Children from Sexual Offences Act, 2012 (for short, the POCSO Act) and
Sections 9, 10 and 11 of the Prohibition of Child Marriage Act, 2006
registered at Police Station Titram, District Kaithal.

The aforesaid FIR was registered at the behest of Hasina wife of
Irphan (mother of the prosecutrix). As per the FIR, on 05.11.2018 at about

09.00/10.00 P.M., her daughter had gone outside for a walk at *Kaccha* way leading to Titram. The complainant heard a noise of motorcycle and her daughter did not come back at home. On enquiry, no clue was found about her daughter. She doubted that some unknown motorcyclist had taken her daughter by enticing her and had kept her at some secret place.

Learned counsel for the petitioner has argued that the petitioner and the prosecutrix have solemnised marriage on 15.11.2018 and the statement of the prosecutrix under Section 164 Cr.PC was recorded by the Judicial Magistrate 1st Class, Kaithal on 26.11.2018, wherein she had stated that she had left her house on 05.11.2018 and had willingly solemnised marriage with the petitioner. She is happily residing with the petitioner after marriage and no one has brought her by fleeing or alluring. She willingly went to perform marriage.

He has further argued that the petitioner and the prosecutrix had approached this Court by way of *CRM-M-51011 of 2018* titled as *Shana and another Versus State of Haryana and others* for protection on the ground of marriage, wherein the prosecutrix had produced her Aadhar Card showing her date of birth as 01.01.2000 and in this manner, she was major and was of marriageable age. He further states that this Court, vide order dated 21.11.2018, had initially granted protection to the petitioners, though the said petition was dismissed vide order dated 10.01.2019 passed by this Court.

He has further argued that now under the influence of her parents, the prosecutrix has changed her version. Otherwise, she along with the petitioner had approached this Court for protection on the ground of

marriage. Even in her statement under Section 164 Cr.PC, she has fairly admitted that she had gone with the petitioner at her own and had solemnised marriage with the petitioner. The petitioner is in custody since 10.01.2019 and it being an inter-religion marriage, the parents of the girl are pressing her hard and for this reason, she has deposed against the petitioner before the trial Court.

Learned counsel for the complainant has argued that the prosecutrix is a minor. In fact, her date of birth is 18.03.2003, but the petitioner, by misrepresentation, got filed the protection petition before this Court by showing her date of birth as 01.01.2000 in the Aadhar Card, which is seriously disputed. He further states that even if the prosecutrix has made a statement under Section 164 Cr.PC in favour of the petitioner, the same is of no relevance as she is minor.

Learned State counsel does not dispute the custody. She states that the prosecutrix and the complainant have been examined in the case and they have supported the case of the prosecution. As against 27 witnesses cited by the prosecution, 21 witnesses have been examined and the case is at the advance stage of trial.

I have heard learned counsel for the parties.

There is no dispute that the petitioner is in custody since 10.01.2019. The prosecutrix and the petitioner have approached this court by way of *CRM-M-51011 of 2018* so as to seek protection on the ground of marriage. The prosecutrix in her statement under Section 164 Cr.PC has supported the petitioner and stated that she had gone at her own and

solemnised marriage with the petitioner without any pressure. She is happily residing with the petitioner.

No doubt, when the prosecutrix and the complainant were examined before the trial Court, they have deposed against the petitioner, but the prosecutrix when examined in the case has not disputed the photocopy of the Aadhar Card Ex.DD, which bears her signatures. She has stated that the date of birth recorded in the Aadhar Card is 01.01.2000. She has not disputed the statement made by her under Section 164 Cr.PC (Ex.DE). In this manner, when the petitioner is in custody since 10.01.2019 and the culpability is yet to be established during the trial, 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.

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 18, 2019
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned:	Yes
Whether Reportable:	No