

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

CRM-M-28920 of 2019 (O&M)
Decided on:- November 05, 2019.

Gulshan Kumar alias Sabbu.

.....Petitioner.

Versus

State of Punjab.

.....Respondent.

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

Present:- Mr. Vishal Sharma (Vasudeva), Advocate
for the petitioner.

Mr. Saurav Khurana, D.A.G., Punjab.

HARI PAL VERMA, J. (Oral)

CRM-31546-2019

This is an application filed under Section 482 Cr.PC for placing on record the copies of statements and cross-examinations of PW1, PW2 and PW8 as Annexures P-10 to P-12 and photographs as Annexure P-13 (colly).

The aforesaid documents are taken on record subject to all just exceptions.

CRM stands disposed of.

CRM-M-28290-2019

Prayer in this petition filed under Section 439 Cr.P.C. is for grant of regular bail to the petitioner in FIR No.24 dated 26.03.2017 under Sections 363 and 366-A IPC (Section 376 IPC and Section 4 of the Protection of

Children from Sexual Offences Act, 2012 were added later on) registered at Police Station Shahpur Kandi, Pathankot, District Pathankot.

The allegation against the petitioner is that he has enticed away the victim, who was minor, on the pretext of marriage and has solemnised marriage with her.

Learned counsel for the petitioner has relied upon the statement under Section 164 Cr.PC dated 26.03.2017 (Annexure P-2), wherein the prosecutrix has stated that she used to like the petitioner and knew him for the last three years. She got married with him at Mandir at her own wish. She apprehended threat to her husband.

Learned counsel for the petitioner has also referred to the photographs as Annexure P-13 (colly) to contend that the petitioner prosecutrix have solemnised marriage. He has further referred to the cross-examination of PW8 Chuni Lal, who is father of the prosecutrix, wherein PW8 has stated that he got married in the year 1986 and his elder daughter Sanyogita was born after 1½ years of marriage and thereafter, 2 years after the birth of Sanyogita, a son was born to his wife and the victim was born after 4-5 years after the birth of the son. Thus, in view of the cross-examination of PW8, the victim is more than 20 years of age. He has further argued that though the name of father of the victim is Chuni Lal, but the Matriculation Certificate (Annexure P-4) showing the date of birth of the victim as 30.04.2000 does not relate to her, as the father's name of the victim is mentioned as Kuldeep Raj in this document.

He has further contended that the petitioner is in custody since 26.03.2017 and as against 21 witnesses cited by the prosecution, only 9 witnesses have been examined before the trial Court. Thus, the trial is not likely to be concluded in near future.

Learned State counsel does not dispute the custody and the fact that only 9 witnesses have been examined in the case. However, he submits that the matriculation certificate (Annexure P-4) issued by the Punjab School Education Board relates to the victim only as the mother's name of the victim is mentioned in the document as Raj Rani. Thus, the prosecutrix was minor and even if, she had consented for marriage, such consent is meaningless.

I have heard learned counsel for the parties.

The petitioner is in custody since 26.03.2017. As against 21 witnesses cited by the prosecution, only 9 witnesses have been examined. The photographs Annexure P-13 (colly) as well as the cross-examination of PW8 Chuni Lal does reflect that he got married in the year 1986 and the victim is the third child in the family and in case the calculation so suggested in the cross-examination is considered, the age of victim comes to around 20 years.

Without making any observations as regard the exact age of the victim, but considering the statement of victim under Section 164 Cr.PC as well as the photographs Annexure P-13 (colly) coupled with the fact that the trial is not likely to be concluded in near future, 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.

November 05, 2019
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No