

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

CRM-M-31138 of 2019.

Decided on:- October 19, 2019.

Bunty @ Krishan.

.....Petitioner.

Versus

State of Haryana.

.....Respondent.

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

Present:- Mr. Tejpal Singh Dhull, Advocate for the petitioner.

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

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.386 dated 09.09.2018 under Sections 363, 366-A, 506 and 376-D IPC and Sections 4, 6 and 17 of the Protection of Children from Sexual Offences Act, 2012 (for short, the POCSO Act) registered at Police Station Kurukshetra University, Kurukshetra.

Learned counsel for the petitioner has argued that, in fact, the petitioner and the prosecutrix had love affair having same feelings. They are of the same age group. The FIR has been registered against the petitioner for the reason that the parents of prosecutrix did not like this love affair and, therefore, they have caused grievous injuries to the petitioner for which an FIR No.261 dated 27.08.2018 under Sections 323, 324, 325, 326 and 341 read with Section 34 IPC (Annexure P-2) was registered at Police Station Narnaund and the offence under Section 307 IPC was also added in the case. He refers to the photographs (Annexure P-3) attached with the petition.

He further states that not only there is a grievous injury on the head of the petitioner, rather, his one index finger has been amputated. The petitioner is in custody since 08.10.2018 and the prosecutrix is not coming forward to depose in the case, despite the fact that the case was fixed for recording prosecution evidence on 23.09.2019 and thereafter on 09.10.2019. The sole purpose for non-appearance of the prosecutrix is to delay the proceedings so that the petitioner remains inside in the jail and the matter can be compromised.

Learned State counsel, on instructions from SI Balwinder Singh, does not dispute the custody and the injuries suffered by the petitioner on the basis of aforesaid FIR (Annexure P-2) registered against the accused, who happens to be the family members of the prosecutrix.

I have heard learned counsel for the parties.

The FIR (Annexure P-2) was registered at the behest of Mandeep Singh, cousin brother of the petitioner. The injuries as alleged in the said FIR are serious which is very much visible from the photographs so attached with the petition. The FIR (Annexure P-2) was registered on 27.08.2018, whereas the present FIR naming the petitioner as an accused was registered on 09.09.2018 for the alleged incident which had taken place on 24.08.2018. Thus, it is clear that the present FIR has been registered after registration of the FIR (Annexure P-2).

The prosecutrix is stated to be a student of B.A. (Part-I) and her date of birth is shown as 11.11.2000 and in this manner, on the date of alleged incident, she was short of about 2-3 months so as to attain the age of 18 years.

No such medical evidence has been produced, so as to support the case of the prosecution as she was medically examined on 26.08.2018. The FSL report dated 28.12.2018 suggests that human semen was detected on exhibit-2 (underwear) belonging to the petitioner. However, semen could not be detected on rest of the exhibits mentioned in the report i.e. Exhibit-1a to Exhibit-1e belonging to the prosecutrix.

In this manner, when the petitioner is in custody since 08.10.2018 and the culpability is yet to be established during the trial, which is not likely to be concluded in near future as the prosecutrix has not appeared before the trial Court for her examination on 23.09.2019 and then on 09.10.2019, 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 19, 2019

Yag Dutt

(HARI PAL VERMA)

JUDGE

Whether speaking/reasoned:

Yes

Whether Reportable:

No