

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

CRM-M-40934 of 2019.

Decided on:- November 02, 2019.

Kuldeep Singh.

.....Petitioner.

Versus

State of Punjab.

.....Respondent.

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

Present:- Mr. Sanjeev Kumar Bawa, Advocate for
Mr. Naveen Sharma, Advocate
for the petitioner.

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

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.218 dated 18.08.2018 under Sections 363 and 366-A IPC (Section 376 IPC and Sections 3, 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 were added later on) registered at Police Station Talwandi Sabo, District Bathinda.

Learned counsel for the petitioner has submitted that the aforesaid FIR was registered on the basis of statement of Tej Kaur, who is grandmother (Nani) of the victim, who is a student of 10th class. As per the allegations, the prosecutrix had left for the school on 14.08.2018, but she had not returned back. Search was made and thereafter, the complainant came to

know that the petitioner had enticed away her grand-daughter on the pretext of marriage as the petitioner used to visit their house earlier also.

Learned counsel for the petitioner has argued that the petitioner is in custody since 26.08.2018. The complainant is a hearsay witness, whereas the prosecutrix while appearing in the witness box as PW1 has not supported the prosecution case, rather, declared hostile. He has referred to the cross-examination of the prosecutrix (PW1), wherein she has denied the allegation of rape having been committed upon her against her wishes. She had also stated that her statement under Section 164 Cr.PC was recorded at the instance of her maternal uncle.

Learned State counsel has not disputed the custody and on instructions from ASI Dharamvir Singh, states that the samples were never drawn in the case for DNA test. However, the prosecutrix has identified the petitioner as an accused. However, he states that as against the total 18 witnesses cited by the prosecution, 5 witnesses have already been examined and the case is now fixed for recording prosecution evidence on 08.11.2019.

I have heard learned counsel for the parties.

The petitioner is in custody since 26.08.2018. In the absence of DNA report and the fact that the prosecutrix has not supported the case of the prosecution while appearing in the witness box as PW1, and rather declared hostile, 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 02, 2019
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned:	Yes
Whether Reportable:	No