

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

CRM-M-44892-2019

Date of decision:13.12.2019

MUKARAM

.....Petitioner

Versus

STATE OF HARYANA

.....Respondent

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**CORAM : HON'BLE MR.JUSTICE GURVINDER SINGH GILL**

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Present: Mr. Satish Chaudhary, Advocate  
for the petitioner.

Mr. Ashok Singh Choudhary, Addl. A.G., Haryana.

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**GURVINDER SINGH GILL, J. (ORAL)**

1. The petitioner seeks grant of regular bail in case registered vide FIR No.109 dated 13.4.2019 under Sections 376(3), 506 IPC read with Section 4 of POCSO Act, Police Station Sadar Yamuna Nagar, District Yamuna Nagar.
2. Mr. Namit Khurana, Advocate has put in appearance on behalf of the complainant and has filed power of attorney, which is taken on record.
3. The FIR was lodged at the instance of Ikram wherein it has been alleged that the accused used to have physical relations with his daughter aged 17 years while alluring her with promise of marriage. When complainant's

daughter asked the accused to solemnize marriage, he asked her to come to his house. On 10.4.2019 when complainant's daughter went to the house of accused, he again raped his daughter on the pretext of marriage while refusing to solemnize marriage with her.

4. Learned counsel for the petitioner has submitted that it is a case where the complainant's daughter have been having consensual physical relations with the petitioner and that since she is apparently aged more than 18 years, no offence under Section 376 IPC is made out.
5. Opposing the petition, the learned State counsel assisted by learned counsel for the complainant has submitted that since the complainant's daughter, as per School Leaving Certificate was aged less than 18 years, therefore even if the prosecutrix had given any consent for physical relations, the same would be immaterial.
6. Vide order dated 29.10.2019, this Court had directed the State to verify the assertions of the petitioner as regards the age of the prosecutrix. The State has today filed reply by way of affidavit of Sh. Subhash Chand, HPS, Deputy Superintendent of Police, Yamuna Nagar, para Nos.2 and 4 of the said affidavit reads as follow:-

*“2. That on the same day i.e. 4.12.2019 the Investigating Officer approached the concerned Aanganwadi worker village Lakhnauti and sought her report regarding date of birth of the victim. The concerned Aanganwadi worker has given her report regarding birth of victim. In her report she has certified that on 27.01.2007 she has conducted the survey of Village Lakhnauti and as*

*per survey on 27.01.2007 the age of victim was got recorded 7 years and she has stated that the entry in this regard is recorded at page No.2 in Aanganwadi register. A true translated copy of the said report of Aanganwadi worker is annexed herewith as Annexure R-2.*

4. *That the concerned Investigating Officer has approached the school authorities who issued school leaving certificate and verified about the record of the date of birth of the victim. As per verification of the Investigating Officer school authority has not provided any basic record on the basis of which the date of birth of the victim recorded as 1.6.2003 in school leaving certificate issued by said school. The age of the victim was disclosed by the parents of the victim before the said authorities.”*

7. The aforesaid deposition would prima-facie show that the age of the prosecutrix was more than 18 years. In view of the aforestated position, especially bearing in mind the age of the prosecutrix it would certainly be debatable as to whether it is a case which would constitute an offence of rape or not since the physical relations are stated to have been established while holding out promise of marriage which was not fulfilled by the accused. The petitioner has been behind bars since the last about 8 months and that the prosecutrix already stands examined during the proceedings of the trial. The petition, as such, is accepted and it is ordered that petitioner be released on bail on his furnishing bail bonds/surety bonds to the satisfaction of learned trial Court/Chief Judicial

Magistrate/Duty Magistrate, concerned.

8. It is, however, clarified that none of the observations made above especially as regards the age of the prosecutrix shall be construed to be an expression on merits of the main case.
9. This petition stands accepted accordingly.

13.12.2019  
Gaurav Sorot

( GURVINDER SINGH GILL )  
JUDGE

Whether reasoned / speaking?      Yes / No

Whether reportable?      Yes / No