

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

CRM-M-45771 of 2019.

Decided on:- November 07, 2019.

Sunil Shah.

.....Petitioner.

Versus

State of Haryana.

.....Respondent.

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

Present:- Mr. Abhilaksh Grover, 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.63 dated 26.05.2019 registered at Women Police Station, Sector-51, Gurugram, wherein the petitioner is sought to be prosecuted under Section 354-A IPC and Section 8 of the Protection of Children from Sexual Offences Act, 2012 (for short, the POCSO Act).

Learned counsel for the petitioner states that the petitioner is being prosecuted under Section 354-A IPC and Section 8 of the POCSO Act though initially, the aforesaid FIR was registered under Sections 376 and 354-A read with Section 34 IPC. During investigation, which has been verified by Assistant Commissioner of Police (Crime Against Women), Gurugram, the allegation of rape having been committed by the petitioner

upon the prosecutrix has not been established and it is for this reason, the petitioner has been charged for offence under Section 354-A IPC and Section 8 of the Protection of Children from Sexual Offences Act, 2012.

The petitioner is in custody since 30.08.2019. At the most, the allegation against the petitioner is of alleged incident dated 05.02.2019 and on that day, the prosecutrix had already attained the age of majority as she was more than 18 years of age. He has referred to the charge-sheet dated 11.10.2019 (Annexure P-3) in support of his contention. The date of birth of the prosecutrix is 28.12.2000 and in support thereof, he refers to the document (Annexure P-5), a certificate issued by the Registrar (Birth and Death) while making reference to the document (Annexure P-6), the date of births of other siblings, wherein complainant Asha Rani is known as Rekha as well.

He further states that the marriage of the daughter of real sister of the petitioner is fixed for 08.11.2019 and in the background of the investigation and the charge so framed when the offence of rape has not been established during investigation, the petitioner be admitted on bail.

Learned State counsel, on instructions from Inspector Garima, does not dispute the custody and the fact that during investigation, which has been verified by Usha, HPS, Assistant Commissioner of Police, Crime Against Women East, Gurugram on 25.09.2019, the allegation of commission of rape upon the prosecutrix has not been established, though the allegation of outraging the modesty of the prosecutrix under Section 354-A IPC was found and charge proved accordingly.

I have heard learned counsel for the parties.

Considering the fact that the petitioner is in custody since 30.08.2019 and the allegation of rape has not been established against him, which is substantiated from the fact that no charge has been framed against him under Section 376 IPC, 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 07, 2019
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No