

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

CRM-M-34262 of 2018.
Decided on:- January 21, 2019.

Lakhan alias Yashraj.

.....Petitioner.

Versus

State of Haryana.

.....Respondent.

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

Present:- Mr. Bipan Ghai, Senior Advocate with
Mr. Deepanshu Mehta, Advocate
for the petitioner.

Mr. Manish Bansal, D.A.G., Haryana
for the respondent-State.

Mr. Viraj Gandhi, Advocate
for the complainant.

HARI PAL VERMA, J.

Present is a third petition filed by the petitioner under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail in FIR No.562 dated 15.07.2017 under Sections 120-B, 363, 366-A, 354, 354-D, 506 and 376(2)(n) IPC as well as Sections 4/6 of the Protection of Children from Sexual Offences Act, 2012 registered at Police Station Suraj Kund, District Faridabad.

The earlier two petitions filed by the petitioner before this Court i.e. *CRM-M-12289 of 2018* and *CRM-M-17404 of 2018* were dismissed as withdrawn vide orders dated 04.04.2018 and 25.05.2018 respectively.

Learned senior counsel for the petitioner has argued that the petitioner is in custody since 02.08.2017 and since brother of the petitioner has also been arrayed as an accused at a later stage, the trial has virtually re-started and conclusion thereof shall take sufficient long time. The date of birth of the prosecutrix is 01.01.2001. Statements of the prosecutrix under Section 161 Cr.PC recorded on 15.07.2017, whereas under Section 164 Cr.P.C. was recorded on 16.07.2017, are liable to be disbelieved being extremely vague and general. There are material improvements in her statement recorded under Section 164 Cr.P.C. Both the statements are at variance. For having contradictions in both the statements under Section 161 Cr.PC as well as under Section 164 Cr.PC, the case of the prosecution is bound to be disbelieved and is unworthy of credit. He refers to the statement of the prosecutrix under Section 164 Cr.PC (Annexure P-3) to contend that the petitioner-accused and the prosecutrix were known to each other for more than a year and had been meeting regularly.

On the other hand, learned State counsel has opposed the bail application on the ground that the prosecutrix has supported the case of the prosecution in its totality. At the time of registration of the FIR, the prosecutrix was about 16 ½ years of age, whereas the petitioner is a matured person of 30 years of age and has been committing rape upon the prosecutrix while extending continuous threat to her. Only because Pawan, who is the

brother of petitioner has also been arrayed as an accused in the case and proceedings in the case have re-started, is no ground to grant regular bail to the petitioner.

I have heard learned counsel for the parties.

No doubt, the petitioner is in custody since 02.08.2017, but perusing the allegations made in the FIR and the statement of prosecutrix recorded under Section 164 Cr.PC, it is clear that at the time of registration of the FIR, the prosecutrix was about 16 ½ years of age, whereas the petitioner is a matured person of 30 years of age. There is a possibility that in case the petitioner is released on bail, he may influence the witnesses as even the prosecutrix has levelled allegations against him that he has been committing rape while extending continuous threat to her. Though it has been argued on behalf of the petitioner that the prosecutrix was known to him for more than a year, but even if it is assumed that she was a consenting party, then also it is not a fit case for grant of regular bail to the petitioner as the prosecutrix was about 16½ years of age at the time of registration of F.I.R.

Thus, considering the fact that the earlier two petitions filed by the petitioner for regular bail were dismissed as withdrawn coupled with the fact that there are serious allegations levelled against the petitioner, this Court finds that no ground for grant of regular bail to the petitioner is made out at this stage.

Accordingly, the present petition, being devoid of any merit, is dismissed.

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.

January 21, 2019
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned:	Yes
Whether Reportable:	No