

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

**CRM-M-13080 of 2020 (O&M)  
DATE OF DECISION: 24.08.2020**

**Sehwaj**

**...Petitioner**

**Versus**

**State of Haryana**

**...Respondent**

**CORAM : HON'BLE MR. JUSTICE ARUN MONGA**

Present : Mr. Vikas Kumar, Advocate,  
for the petitioner.

Mr. Bhupender Singh, DAG, Haryana.

Mr. Sanjiv Gupta, Advocate,  
for the complainant.

**(Presence marked through video conference).**

**ARUN MONGA, J. (ORAL)**

**CRM NO. 11437 OF 2020**

Allowed, as prayed for.

**MAIN CASE**

The petitioner is seeking regular bail in FIR No.0211 dated 06.10.2019, registered under Sections 363/366-A/406/506 IPC and Section 6 of the Prevention of Children from Sexual Offence (hereinafter referred to as "the POCSO Act"), Act, 2012 registered at Women Police Station NIT Faridabad, District Faridabad.

2. Per allegations in the FIR, prosecutrix had been talking with one Ashad Ali on her cell phone for about a month. On 05.10.2019, he came in one swift car and seduced her to take her to the house of one of his friends at village Rehadi. She was kept there and he raped her entire night on the pretext of

marriage. Later on, she escaped and came back to her parental home and told the entire incident to her family.

3. Learned counsel for the petitioner contends that petitioner had just about got married sometime in June, 2019 and it is highly improbable that he forced himself on prosecutrix in October- 2019, as alleged. The petitioner was falsely implicated in the present FIR due to some previous dispute with brother of prosecutrix. A perusal of the FIR reveals that he is neither named in the FIR, nor even subsequently when statement of the prosecutrix was recorded under Section 161 Cr.P.C. However, after a gap of 03 days when her statement was recorded under Section 164 Cr.P.C., specific allegations against the petitioner were made therein alleging that they were on friendly terms with each other and the petitioner had allured her to get married with her which led to her having consensual relationship with him. Even though no specific instance of any alleged rape has been made by the prosecutrix, who being a minor girl of 16-½ years at the time of alleged occurrence, Section 6 of POCSO Act was also invoked, apart from Section 376 IPC.

4. Learned counsel for the petitioner further contends that even the statement under Section 164 Cr.P.C was recorded under the influence of father of the prosecutrix, as borne out from Annexure P-5 wherein presence of prosecutrix's father is also shown. Though learned counsel for the complainant refutes the same on the ground that the prosecutrix being a minor, it was deemed necessary by the Magistrate to record her statement in the presence of her father.

5. Learned counsel further submits that investigation has already been completed and challan has been presented.

6. My attention has been drawn to call details exchanged between the petitioner and the prosecutrix which would reflect that they were indeed in

contact with each other. They were having long conversations lasting from few minutes to about half an hour at times. That apart, perusal of the record reflects that there has been certain enmity between the family of the prosecutrix and the petitioner group/his friends, which led to registration of an earlier FIR (Annexure P-1), which was registered sometime in October, 2018 by the brother of prosecutrix. At this stage, it is difficult to ascertain whether the present FIR registered subsequently in the year 2019, has arisen out of dissatisfaction of the prosecutrix's brother for adequate action not being taken against the petitioner group or on the other hand, allegations in present case arise out of an act of revenge by the petitioner.

7. Be that as it may, looking at the over all scenario and the fact that the petitioner has been behind the bars since 12.12.2019 and challan has been filed, no further investigation is to be carried out coupled with the fact, that there is no headway in the trial. Trial is not likely to commence or conclude anytime soon due to covid-19 pandemic. Courts are currently working with restrictions and taking up only urgent matters. Considering the overall circumstances, without commenting on the merits of the case, the petition is allowed. Petitioner shall be released on bail on his furnishing bail bonds and surety bonds to the satisfaction of concerned trial Court/Chief Judicial Magistrate/ Duty Magistrate, as the case may be. Petitioner is directed to not contact the prosecutrix and not to approach or influence any other witness or temper with evidence during his bail period, failing which, prosecution/complainant are at liberty to seek cancellation of his bail.

**(ARUN MONGA)**  
**JUDGE**

**August 24, 2020**  
shalini

Whether speaking/reasoned : Yes/No  
Whether reportable : Yes/No