

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

**CRM-M-18544 of 2020 (O&M)
DATE OF DECISION : 30.07.2020**

Akash

...Petitioner

Versus

State of U.T.

...Respondent

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Harsh Manocha, Advocate,
for the petitioner.

Mr. A.M. Punchhi, P.P., U.T. Chandigarh
(Presence marked through video conference)

ARUN MONGA, J. (ORAL)

1. The petitioner is seeking regular bail in FIR No. 244 dated 28.11.2019, registered under Sections 376(3), 363, 366 IPC and Section 6 of the Protection of Children from Sexual Offence Act, 2012, Police Station Sector 36, Chandigarh.
2. FIR was registered on 28.11.2019 pursuant to a complaint given by complainant Dharampal. He informed about his daughter, aged 15 years, having gone missing since 27.11.2019. He apprehended that his minor daughter was enticed away by someone. Initially, FIR was registered under Sections 363, 366 IPC and Section 6 of the POCSO Act. However, on recovery of prosecutrix, offence under Section 376(3) IPC was added.
3. The petitioner is stated to be in custody since 06.12.2019.
4. Mr. Harsh Manocha, learned counsel for the petitioner argues that petitioner is a youngster of 23 years. According to him, the prosecutrix and the

petitioner were having love affair. Prosecutrix went away with the petitioner of her own will. It was a consensual relationship.

5. He further submits that petitioner and prosecutrix solemnized marriage at Rudrapur and before marriage prosecutrix disclosed her age as 19 years by way of affidavit/ marriage declaration sworn at the time of marriage.

6. Learned Counsel for petitioner refers to statement of the prosecutrix under Section 164 Cr.P.C. made before the Magistrate, wherein she specifically deposed that she was not taken forcibly by anyone and she herself had gone with petitioner at Rudrapur, where they solemnized their marriage. She further states that she would die in case she does not get to live with the petitioner.

7. Learned counsel for the petitioner also refers to AADHAR card of the prosecutrix (Annexure P-4) wherein her year of birth has been given as 2000. According to him, she is a major. Trial is not likely to conclude soon due to Covid-19 pandemic, he contends.

8. On the other hand, Mr. A M. Punchhi, learned Public Prosecutor, opposes the bail plea. He submits that prosecutrix is minor and the plea of consensual relationship is completely insignificant. According to him, considering the gravity of offence, the petitioner is not entitled to bail.

9. The petitioner is in custody since 06.12.2019. There is no dispute qua statement under Section 164 Cr.P.C. The prosecutrix has herself stated that she had gone with the petitioner of her own sweet will and has solemnized marriage with him. There is though contradiction about the age of the girl. In the AADHAR card, her year of birth has been given as 2000 while learned counsel PP contends that her date of birth is 09.08.2004. On query of court he could not refer or show to any document in support thereof. It is for the trial Court to adjudicate on the issue of age of prosecutrix and the resultant aspect of her having given valid consent for the relationship.

10. Taking wholesome view of the matter, I am of the considered opinion that no useful purpose would be served by keeping the petitioner behind the bars any more. Especially, when further trial is also held up. Due to covid-19 pandemic Courts are working with restrictions, taking up only urgent matters. Without expressing any opinion on the merits of the case, petition is allowed. Petitioner shall be released on bail on his furnishing bail bonds and surety bonds to the satisfaction of Chief Judicial Magistrate/ Duty Magistrate, Chandigarh, as the case may be.

(ARUN MONGA)
JUDGE

JULY 30, 2020
Jiten

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No