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

CRM-M No. 26735 of 2020
Date of Decision: 11.09.2020

Abbas @ Mastan

-Petitioner

Vs

State of Haryana

-Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

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

Mr. Rajat Gautam, D.A.G., Haryana.

RAJ MOHAN SINGH, J. (ORAL)

The case has been taken up for hearing through video-conferencing.

Petitioner seeks grant of regular bail under Section 439 Cr.P.C. in case bearing FIR No.345 dated 14.08.2019 under Sections 363/366-A IPC and under Section 6 of POCSO Act registered at Police Station Sector-5 Gurugram, District Gurugram.

FIR was registered by the father of Muskan. She was found missing from the house in the morning on 14.08.2019. Complainant alleged that she has gone somewhere with her own free will.

Petitioner is juvenile with date of birth as 05.03.2004. The prosecutrix is also a teen age having date of birth 16.03.2004. Petitioner and the prosecutrix fell in love affair. On account of teen age love, they used to chat on telephone. They were frequent visitors of their houses and play together. Both ran away from the house.

Complainant made a subsequent complaint to the police on 30.08.2019, raising suspicion with regard to involvement of the petitioner. On the basis of said complaint, offence under Section 346 IPC was substituted by the offence under Section 363, 366-A IPC. The girl was recovered from District Dausa (Rajasthan) on 31.08.2019 and her statement under Section 164 Cr.P.C. was recorded. She was also medically examined in addition to counselling before the Child Welfare Committee, Gurugram.

Petitioner was arrested on 01.09.2019.

After filing of challan and framing of charges, material witnesses have been examined by the trial Court.

Learned counsel for the petitioner submitted that the petitioner and the prosecutrix were in the age group of 15½ at the time of commission of offence. The girl was recovered from District Dausa (Rajasthan) where both were residing on rent. The accused had established physical relations with the

prosecutrix. They resided together on rent for about 15 days.

In respect of juvenility of the petitioner, proceedings are pending before the Additional Sessions Judge, Gurugram and the same have not been made headway after 03.05.2020. Petitioner is found to be less than 16 years of age at the time of commission of offence according to date of birth.

Principle of presumption would apply in case of juvenile till his/her complicity is proved by incriminating evidence. The only consideration at this stage is to reach at a prima facie conclusion that the ends of justice would be defeated in the event of enlarging the juvenile in conflict with law on bail and such release of juvenile would expose him morally, physically and psychologically, when he will be associated with known criminal. Bail can be rejected only in three eventualities i.e. where reasonable ground exists for believing that the release of juvenile in conflict with law is likely to bring him in association with known criminals. The release would expose him morally, physically and psychologically and the release would defeat the ends of justice.

Petitioner is in custody since 01.09.2019.

Learned State counsel on instructions from Lady Sub Inspector Kiran submitted that material witnesses have already been examined and the release of the petitioner would definitely

expose him morally, physically and psychologically and his chances of coming in contact with known criminals would be higher.

In my opinion, this would be a subjective thing and cannot be generalized in every case.

Keeping in view the situation arising out of pandemic COVID-19 and without meaning anything on the merits of the case, petitioner is directed to be released on regular bail, subject to his furnishing adequate bail bonds/surety bonds to the satisfaction of trial Court/concerned Duty Magistrate.

Nothing expressed hereinabove would be construed to be an opinion on the merits of the case.

11.09.2020
Jyoti Sharma

(RAJ MOHAN SINGH)
JUDGE

1. Whether speaking/reasoned : Yes/No
2. Whether reportable : Yes/No