

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

CRM M-27371 of 2020 (O&M)
Date of Decision: September 22, 2020

Yogender Vashishth		Petitioner
	Versus	
State of Haryana		 Respondent

CORAM : HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present : Mr. J.S. Bedi, Sr. Advocate with
Mr. Sunil Sihag, Advocate
for the petitioner.

Mr. Baljinder Virk, DAG, Haryana.

FATEH DEEP SINGH, J. (Oral)

The matter has been taken up through video-conferencing on account of outbreak of pandemic COVID-19.

Accused/petitioner Yogender Vashishth teacher who is in judicial custody has come up before this Court in this second regular bail application moved under Section 439 Cr.P.C. in FIR No. 161 dated 25.12.2018 registered under

Section 6 of Protection of Children from Sexual Offences Act, 2012 (hereinafter to be referred as 'the Act') and 506 IPC registered at Police Station Women West, Gurugram.

The complainant, mother of a minor girl aged around 17 years and 03 months, a student of 12th class alleged that her daughter was taking tuitions at the centre being run by the petitioner. From 23rd November 2018, the girl refused to go for her tuitions. Alarmed over the strange conduct of the child the worried parents tried to know the reasons and, subsequently, the girl disclosed that the petitioner tutor used to threaten her and committed wrong acts and even claimed to have recorded videos of the episodes.

Mr. J.S. Bedi learned Sr. Advocate assisted by Mr. Sunil Sihag has argued that the girl is a major and her date of birth as per the birth certificate is 04.04.2020 (Annexure-P3) and to bring the case within the fore corners of provisions of not being a major to attract provisions of POSCO, the date has been fabricated as 09.09.2001 when it is not so and keeping in view the date of occurrence she at the time of the occurrence was 18 years and 05 months and has placed reliance on birth certificate and statement of Manisha Vashisht (Annexure P-3 colly.), letter of verification of birth certificate and intimation letter (Annexure P-4 colly.) and statement of Manisha Vashishth, Sub-Registrar, Birth and Death Municipal Corporation Gurugram

(Annexure P-5). Mr. Bedi, learned senior counsel has further argued that on the day of the alleged occurrence i.e. 13.09.2018 as per the mobile locations of the petitioner he was in Delhi and not at the place of the occurrence falsifies the claim of the prosecution. The counsel has forcibly submitted that the petitioner has undergone incarceration since 25.12.2018 and there is no medical evidence except the oral testimony of the girl to corroborate these allegations.

Mr. Baljinder Virk, DAG, Haryana the learned State counsel has opposed the bail submitting that the petitioner is a teacher has violated a minor girl student and in view of the heinousness of the offence disentitles him to any relief. The counsel has further shared his apprehension that if allowed bail there is every likelihood that he would influence the witnesses who are co-students.

Appreciating the submissions of the two sides as stands reflected from the numerous documents placed on the records by the petitioner a question arises as to the date of birth of the prosecutrix and which is corroborated from the date of birth shown by the girl in her face book account and, therefore, the copies obtained by the petitioner side from the concerned authority through right to information reflects that the date of birth of the girl was in fact April 2000 prima facie shown and not September 2001 and which stand could not be rebutted by the

State before this Court. Thus, by that analogy the girl was a major. There being lack of medical evidence to corroborate the allegations and the fact that the petitioner has undergone incarceration for almost 1 ½ years and in view of the present threat of COVID-19 pandemic there being no likelihood of expeditious disposal of the trial, thus, without adverting further on to the merits of the trial impels this Court to allow the present bail application. Accordingly, the petitioner is ordered to be released on regular bail to the satisfaction of Chief Judicial Magistrate/Duty Magistrate, concerned

However, it is made clear that anything observed herein shall not be construed as an expression of opinion on the merits of the case.

Disposed off accordingly.

September 22, 2020

(FATEH DEEP SINGH)

amit rana

JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No