

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

**CRM-M-3439-2021 (O&M)
Date of Decision : 28.01.2021**

Javed

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Lakh Raj Nandal, Advocate
for the petitioner.

Mr. Deepak Grewal, DAG, Haryana

ARVIND SINGH SANGWAN, J. (Oral)

This is a petition under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR No.135 dated 09.03.2020 under Sections 6 and 8 of POCSO Act, 2012 and Sections 363, 366-A of IPC (Section 376-D IPC was added later on) registered at Police Station, City Sohna, District Gurugram, Haryana.

Learned counsel for the petitioner submits that as per allegation in the FIR, which was initially a Zero FIR, it was stated that a girl child (name withheld), aged about 15 years, had given a statement before Women Police Station, Nuh that they are five brothers and sisters and she is the youngest amongst all of them and her other siblings are married. It was further stated that her brother Javed was committing rape upon her forcefully for the last one year and when she shared this trauma with her family members, they, instead of helping her, rather threatened her to keep her mouth shut. Due to this misconduct, she left her home on 05.03.2020 and reached her aunt's (*Bua*) house

at Sohna bypass. On coming to know this fact, her mother brought her back to her home. Thereafter, petitioner Javed son of Noor Mohd., who is a friend of victim's brother Javed, took her to his village, where his mother Asharfi was present. The victim ran away from the house and reached village Pinangawan by taking a lift in a tempo, where a lady informed the police and rescued the girl child. The victim, however, stated before the police that her brother Javed was sexually exploiting her for last one year, whereas, petitioner Javed was keeping an evil eye on her. On this, the present FIR was registered.

Learned counsel for the petitioner further submits that thereafter, the victim was counselled by CWC, Gurugram where she was found pregnant and as per rules, the pregnancy was terminated and foetus was preserved and the sample was sent for DNA test. The petitioner was arrested on 16.03.2020 and one other accused Ifran was arrested on 17.03.2020 against whom, there were allegations of molestation as per victim's statement recorded under Section 164 of Cr.P.C. The brother of the victim, namely Javed, could not be arrested.

Learned State counsel submits that the *challan* stands presented and during investigation, the police found brother of the victim, Javed, to be an innocent person.

Learned counsel for the petitioner further submits that victim has changed her stand from her initial statement and the statement under Section 164 Cr.P.C., as she has levelled aggregation against Javed, his real brother, who has sexually exploited her for one year. The police has exonerated her brother and has arrested the petitioner as there was allegation that he was keeping an evil eye on the victim.

Learned counsel for the petitioner further submits that the petitioner

has rather helped the family of the victim to trace out the child and as per the ossification test, the girl was found to be above 16 years of age.

Without commenting upon the merits of the case and after hearing counsel for the parties, considering the facts and circumstances of the case and also in view of the fact that *challan* stands presented and petitioner is in judicial custody since 16.03.2020; the instant petition is allowed. The petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate/Illaqa Magistrate, concerned.

28.01.2021

Waseem/Chetan

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No