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

CRM-M No.11143 of 2020 (O&M)

Date of decision: 26.03.2021

Rajbir

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Davinder Lubana, Advocate
for the petitioner.

Mr. Deepak Grewal, DAG, Haryana.

ARVIND SINGH SANGWAN J. (Oral)

CRM No.9046 of 2021

Prayer in this application is for preponing the date fixed in
the main petition.

Heard.

For the reasons stated in the application, the same is
allowed and the main case is taken up today for hearing.

CRM-M No.11143 of 2020 (O&M)

Prayer in this petition is for grant of regular bail to the
petitioner in FIR No.24 dated 17.02.2019 registered under Sections
376(2) IPC and 6 of the POCSO Act, at Police Station Women,
Panchkula.

Counsel for the petitioner has stated that as per the
allegations in the FIR, registered at the instance of the victim (name not
disclosed) aged about 15 years, she is staying with her maternal
grandmother (Nani), maternal uncle and aunty (Mama and Mami) and

brother and Laxman @ Lalli had made physical relations against her wishes in December, 2018 in Rajiv Colony, Panchkula when she had gone to his house in search of her friend Nisha. Laxman @ Lalli threatened her that if she informed anything about the incident, he will kill her. In January, 2019, her brother Sunny and maternal uncle Akash also made physical relations with her in the same colony. She was repeatedly subjected to the same against her wishes. On 03.02.2019, she performed marriage with the petitioner – Rajbir and went to Shimla on 12.02.2019 and returned back on 14.02.2019 and therefore, she requested that action be taken against the accused persons.

The police registered an FIR under Section 376(2) IPC read with Section 6 of the POCSO Act and the petitioner was also arrested as the alleged marriage with the victim, who is less than 15 years of age, is not valid and the petitioner had performed sexual intercourse with the victim, therefore, the same is covered in Exception (2) of Section 375 of IPC as it was found that the sexual intercourse by a man with his own wife will be considered rape, if the age of the wife is less than 15 years.

Counsel for the petitioner has further submitted that later on, during the investigation, 02 of the co-accused were found innocent and report under Section 173 Cr.P.C. was submitted against the petitioner as well as the co-accused Laxman @ Lalli. It is also submitted that the petitioner is in long custody and the conclusion of the trial will take some time.

On 03.06.2020, it was noticed by this Court that a child is already born to the victim and the petitioner is ready to accept the

marriage as well as the child and therefore, he be granted the concession of interim bail and accordingly, the petitioner was granted interim bail.

The interim bail was later on, extended from time to time considering the COVID-19 situation.

On 14.10.2020, reply by way of affidavit of the Assistant Commissioner of Police, Panchkula was filed, in which it is stated that the age of the victim was between 13-15 years and the case is now fixed for prosecution evidence. It was also stated that the FSL report is awaited and thereafter, another affidavit was filed on 05.10.2020 along with certain documents vide which the mother of the victim has given a consent that since the victim is pregnant and unable to nurture the child, permission be granted to conduct the abortion. Even the victim has given a similar statement and thereafter, the Chairperson/members, Child Welfare Committee, Panchkula, recommended to Chief Medical Officer, Sector 6, Panchkula that 06 months' pregnancy of the victim, who is aged about 15 years be medically terminated. The police also relied upon the subsequent statement of the mother and father of the victim that she ran away with the petitioner on the pretext of marriage.

Vide order dated 19.02.2021, on perusal of an additional affidavit dated 12.02.2021 filed by the Assistant Commissioner of Police, Panchkula, on account of medical termination of pregnancy, no child was born and the victim has re-married to another person as it was stated by counsel for the petitioner that the petitioner is not in contact with the victim, the interim bail granted to the petitioner was withdrawn as the concession was given on 03.06.2020 on a representation made by

the petitioner that he wants to carry on his marriage with the victim and will take care of the child. The petitioner was directed to surrender before the trial Court, forthwith.

Counsel for the petitioner has further argued that since the petitioner has performed marriage with the victim, the petitioner be granted the concession of regular bail, however, the investigation show that neither any child was born to the victim as on medical advice, she medically terminated her pregnancy and the petitioner has made no effort to keep her as a wife and therefore, on the face of it, the allegation of marriage are not substantiated.

Considering the fact that the age of the victim was less than 15 years; the petitioner, even otherwise, was not competent to perform sexual intercourse with the victim in terms of Proviso (2) of Section 375 IPC.

Accordingly, finding no ground, the petition is dismissed.

(ARVIND SINGH SANGWAN)
JUDGE

26.03.2021
yakub

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