

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

104

CRM-M-20754-2020 (O&M)

Date of decision : 19.01.2021

Sailender Partap Singh

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. J.S. Bains, Advocate
for the petitioner.

Mr. Ranvir Singh Arya, Addl. A.G., Haryana
for the respondent-State.

ARUN KUMAR TYAGI, J (ORAL)

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

CRM-207-2021

For the reasons mentioned in the application, the same is allowed and attested affidavit of the petitioner is taken on record.

CRM-27745-2020

Attested affidavit of the petitioner is already taken on record and the present application has become infructuous.

Disposed of as having become infructuous.

CRM-M-20754-2020

The petitioner has filed the present (first) petition under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to the petitioner in case FIR No.15 dated 22.01.2020 registered under Section 506 of the Indian Penal Code, 1860 (for short 'the IPC') and Section 8 of the Protection of Children from Sexual

Offences Act, 2012 (for short 'the POCSO Act') in Police Station City Gurugram.

The above-said FIR was registered on statement of prosecutrix regarding sexual assault and criminal intimidation by the petitioner. The police investigated the case and during investigation filed charge-sheet while placing reliance on School Certificate issued by Government Primary School, Rai Sikhbas, Panchayat Ramgarh, District Alwar in which date of birth of the prosecutrix was mentioned to be 06.08.2005. However, during trial in another case FIR No.20 dated 25.01.2019 registered under Sections 363 and 109 of the IPC and Section 6 of the POCSO Act in Police Station Gurugram City, District Gurugram against Vijay, the prosecutrix was examined as PW-3. In her statement, the prosecutrix claimed that she was born in the year 2001 and was major and did not attend any school.

Vide order dated 18.09.2020 respondent-State was directed to file an affidavit of a gazetted officer stating therein as to whether there is any other evidence of the age of the prosecutrix.

In compliance of the above-said order reply by way of affidavit of Sh. Rajender Singh, HPS, Assistant Commissioner of Police, City Gurugram on behalf of the respondent-State has been filed in the Registry which is taken on record. However, in the affidavit the school certificate has been again relied upon and there is no mention as to any other evidence as to age of the prosecutrix.

In compliance with the above-said order, the petitioner has filed his affidavit.

I have heard learned Counsel for the petitioner and learned

State Counsel and gone through the relevant record.

Learned Counsel for the petitioner has argued that the petitioner has been falsely implicated in the case. The prosecutrix was more than 18 years of age at the time of alleged occurrence. In her statement made on 16.01.2020 in case titled as 'State Vs. Vijay' referred to above, the prosecutrix stated that she was born in the year 2001 and denied the correctness of school certificate. The petitioner is in custody since 23.01.2020. Trial is likely to take long time due to restrictions imposed to prevent spread of infection of Covid-19 as none of the prosecution witnesses has been examined so far. No useful purpose will be served by keeping the petitioner in custody. The petitioner has filed affidavit that he will not go to the house where the prosecutrix and her mother are residing and would refrain away from that place and preferably from the same town. Therefore, the petitioner may be ordered to be released on regular bail.

On the other hand, learned State Counsel has argued that as per school certificate, the prosecutrix was less than 16 years of age. The petitioner sexually assaulted and criminally intimidated the prosecutrix. In view of nature of accusation and gravity of offences, the petitioner does not deserve grant of regular bail. Therefore, the petition may be dismissed.

Keeping in view the facts and circumstances of the case, nature of accusation and evidence against the petitioner, statement of prosecutrix in other criminal case referred to above regarding her age, affidavit of the petitioner and the fact that trial is likely to take long time due to restrictions imposed to prevent spread of infection of

inclined to extend the concession of regular bail to the petitioner.

Therefore, the petition is allowed and the petitioner is ordered to be released on regular bail on furnishing of bail bonds to the satisfaction of the trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.

19.01.2021

Kothiyal

(ARUN KUMAR TYAGI)
JUDGE

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