

CRM-M-24712-2020

Date of Decision:22.02.2021

Sunny @ Sunil

.....Petitioner

Vs.

State of Haryana

....Respondent

CORAM : HON'BLE MR.JUSTICE AMOL RATTAN SINGH

Present: Mr.Sanjay Vashisth, Advocate and
Mr. Akash Vashisth, Advocate,
for the petitioner.

Mr. Surender Singh, AAG, Haryana.

AMOL RATTAN SINGH, J. (Oral)

Case heard by video conference.

On 18.01.2021, the following order had been passed by this
court:-

Case heard by video conferencing.

By this petition, filed under the provisions of Section 439 of the Cr.P.C., the petitioner seeks the concession of 'regular bail', upon FIR no.267, dated 10.04.2019, having been registered at Police Station Bhiwani Sadar, District Bhiwani, alleging therein the commission of offences punishable under Section 6 of the Prevention of Children from Sexual Offences Act, 2012 and Sections 354A, 376(2), 452 and 506 of the IPC.

Learned counsel for the petitioner has argued that that the petitioner is actually a juvenile and the order of the Juvenile Justice Board, Bhiwani, 31.10.2019, declaring him to be an adult, is actually wholly without foundation because as per the birth certificate issued by the Registrar, Births and Deaths, dated 13.11.2020 (a part of Annexure P-7 colly), the petitioners' date of birth is 10.12.2004, thereby making him to be 14 years and 5 months of age on the date of the occurrence, i.e. 10.04.2019.

However, upon query, he admits that as per his school leaving certificate, his date of birth is 25.10.2001, though even on that basis he would be less than 18 years of age, with the learned Board actually having got conducted an ossification test, on the basis of which it was held that he was above 18 years of age.

He further submits that the petitioner has been in custody since April 2019 and in any case therefore, he deserves to be admitted to bail.

Mr. Surender Singh, learned AAG, Haryana, on the basis of the reply filed by the State, reiterates what has been observed in the order of the Board.

Having considered the matter, first of course it is to be noticed that even as per Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015, a certificate of date of birth issued by a Municipal Corporation/Council/Authority or Panchayat, is to be seen if the date of birth from a school or matriculation examination certificate or equivalent certificate from the concerned examination board is not available, and thereafter, if neither of the two are available, only then, to determine the date, an ossification test is to be held.

Be that as it may, the petitioner already having been in custody for 1 years and 8 months, though the petitioner may be entitled to be admitted to bail on that ground alone, also keeping in view the fact in the "worst case", he would be about 18/19 years of age, with the prosecutrix being slightly less than 16 years of age, however, since learned counsel for the petitioner has very fairly submitted that only two prosecution witnesses remain to be examined, with the next date of hearing in the trial being January 20, 2021, i.e. the day after tomorrow, and therefore the trial court may actually conclude the trial, adjourned to 03.02.2021.

The order to be passed by the trial court on 20.01.2021 shall be placed on record by the next date of hearing. To be taken up after the urgent motion list."

Learned State counsel, upon query to him, submits that, as per his instructions from ASI Parveen Kumar, out of 20 prosecution witnesses 7 have been examined including the prosecutrix and her mother.

That being so, with the petitioner having been in custody for 1 year and more than 10 months now, without making any comment on the actual merits of the case, the petition is allowed and the petitioner is ordered to be admitted to bail, upon him furnishing adequate bail and surety bonds to the satisfaction of the Special Court concerned.

February 22, 2021

dharamvir

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned : YES/NO

Whether Reportable : YES/NO