

202.

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-31052-2020 (O&M)

Date of decision: 08.02.2021.

ARVIND

... Petitioner

Versus

STATE OF HARYANA

.... Respondent

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Salil Sabhlok, Advocate,
for the petitioner.

Mr. Bhupender Singh, DAG, Haryana.

HARI PAL VERMA, J. (Oral)

The matter has been taken up for hearing through video conferencing due to outbreak of COVID-19.

CRM-3109-2021

Prayer in this application filed under Section 482 Cr.P.C. is to place on record the ossification report as Annexure A-1.

For the reasons stated in the application, same is allowed and the document Annexure A-1 is taken on record, subject to all just exceptions.

CRM-M-31052-2020

This is second petition filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case FIR No.608 dated 18.09.2018 registered under Sections 363, 365, 366-A, 370-A, 376-D, 34 of IPC,

Section 6 of POCSO Act and Section 3 of SC & ST Act, at Police Station Samalkha, Panipat.

The earlier petition filed by the petitioner i.e. ***CRM-M-4264-2020*** was dismissed as withdrawn vide order dated 06.02.2020.

Counsel for the petitioner submits that initially the FIR was registered at Police Station Samalkha, Panipat under Section 365 IPC at the behest of mother of the prosecutrix wherein she has complained that her daughter, aged about 15 years, went away from house on 15.09.2018 at 2:30 PM without informing anybody. He further submits that the statement of the prosecutrix was recorded under Section 164 Cr.P.C. on 03.10.2018 wherein no allegation has been made against the petitioner as regard the commission of offence as alleged in the present FIR. Petitioner was arrested in the case on 28.01.2019. The co-accused, namely, Amit @ Negi and Kusum have already been granted bail by this Court in ***CRM-M-43337-2019*** vide order dated 12.12.2019 and ***CRM-M-23624-2019*** vide order dated 01.11.2019 respectively. He further submits that the prosecutrix in the case has been examined and she has not supported case of the prosecution and rather declared hostile. Similarly, mother of the prosecutrix was also declared hostile. As per the ossification test dated 01.08.2019 so as to determine the age of the prosecutrix, it has been opined that the victim appears to be between 18 to 20 years. Therefore, the very offence under the POCSO Act is debatable.

Learned State counsel does not dispute the custody and the report of the ossification test.

I have heard learned counsel for the parties.

Petitioner is in custody for more than 2 years (since 28.01.2019). The other co-accused are on bail and the prosecutrix as well as the complainant have not supported the case and rather declared hostile. Even in the ossification test, it has been opined that the prosecutrix is between the age group of 18 to 20 years and in this manner, the applicability of the POCSO Act is certainly debatable one. Thus, this Court deems it appropriate to admit the petitioner on bail.

Accordingly, the present petition is allowed and the petitioner is admitted on regular bail subject to his furnishing bail bonds/surety bonds to the satisfaction of trial Court/Duty Magistrate.

It is made clear that the petitioner shall not try to contact the prosecutrix and also shall not influence the witnesses directly or indirectly in any manner and in case, it is found that the petitioner is trying to influence the witnesses, the prosecution shall be at liberty to seek cancellation of his bail.

The observations made hereinabove shall not be construed as an expression on the merits of the case and the trial court shall decide the case on the basis of available material.

(HARI PAL VERMA)
JUDGE

08.02.2021
sanjeev

Whether speaking/reasoned
Whether Reportable:

Yes/No.
Yes/No.