

103+214

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

CRM-M-44005-2021 (O&M)

Date of decision : 20.12.2021

Anish

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Talim Hussain, Advocate for the petitioner.

Mr. Praveen Bhadu, AAG, Haryana.

VIKAS BAHL, J. (ORAL)

CRM-43021-2021

Application is allowed, as prayed for.

Statement of prosecution witness No.3 (prosecutrix) (Annexure P-11), is taken on record, subject to all just exceptions.

Main case

This is first petition under Section 439 of Cr.P.C. for grant of regular bail to the petitioner in FIR No.141 dated 11.06.2021 registered under Sections 363 and 366-A of the Indian Penal Code, 1860 (Section 6 of POCSO Act, 2012 and Sections 120-B, 366, 363, 420, 467, 468, and 471 of IPC have been added later on and Section 366-A of IPC has been deleted later on) at Police Station Udyog Vihar, Gurugram.

Learned counsel for the petitioner has submitted that in the present case, father of the prosecutrix had got the FIR registered initially under Sections 363, 366-A of the IPC on the ground that the present petitioner had allegedly enticed the prosecutrix. It has been submitted that the prosecutrix had given a statement under Section 164 of Cr.P.C. on 16.06.2021 in which it had been stated by the prosecutrix that she was 19 years of age and had solemnized the marriage with the petitioner against the wishes of her parents. It is also argued that the said prosecutrix has refused to undergo medical examination. It is further argued that her second statement under Section 164 of Cr.P.C. was recorded on 21.06.2021 in which the prosecutrix had made allegations against the petitioner with respect to rape. It is further contended that now the prosecutrix has been examined on 26.11.2021 and further on 30.11.2021 and reference to the said statement would show that it had been stated by the prosecutrix that she was born on 05.07.2002 and had further submitted that the petitioner is her childhood friend as they have been living in the same building and on 05.06.2021, there were some altercation between the prosecutrix and her parents and thereafter, the prosecutrix left her house without informing her parents and met the petitioner at Bus Stand, Gurugram and started living with the said petitioner in a rented room in the area of Patel Nagar, Gurugram and stayed there for 10 days and during the said period, the petitioner did not touch the prosecutrix and they solemnized their marriage in Saket Court on 15.06.2021. The prosecutrix alongwith the petitioner had visited Gurugram Court for obtaining the police protection and she further submitted that the prosecutrix is a minor and she had left the house to

solemnize the marriage with the petitioner and the petitioner has not committed any sexual acts with the prosecutrix without her consent. The prosecutrix has been declared as a hostile witness. In the cross-examination, it was stated that she had given her earlier statement under the pressure of her family members.

Learned counsel for the petitioner has submitted that the petitioner is a young boy of 22 years of age and is a student and is not involved in any other case and has been in custody since 21.06.2021 and there are 19 witnesses out of which 18 witnesses are yet to be examined and the conclusion of the trial is likely to take time, moreso in view of the COVID-19 pandemic, and thus, prays for grant of regular bail to the petitioner.

On the other hand, learned State Counsel has opposed the present petition for grant of regular bail to the petitioner and has submitted that as per the statement given by the grandfather of the petitioner, the prosecutrix was a minor and had given a second statement under Section 164 of Cr.P.C. dated 21.06.2021 against the petitioner. It is, however, submitted that in fact, her date of birth is 05.07.2005. However, the fact that the prosecutrix had refused to undergo medical examination and also, with respect to the evidence in Court having been given in favour of the petitioner, could not be disputed.

Keeping in view the abovesaid facts and circumstances, moreso the facts that the prosecutrix has appeared as a witness and has stated that the prosecutrix had some altercation with her parents and had left the house and started living with the petitioner of her own choice and even solemnized the

marriage in Saket Court and sought police protection and has stated that no sexual act was performed by the petitioner with the prosecutrix against her wishes and also the fact that the prosecutrix has not got herself medically examined and thus, there is no medical report to prima facie show that the offence under Section 376 of IPC is made out and also the fact that the petitioner is a young boy of 22 years of age and is not involved in any other case and he has been in custody since 21.06.2021 and there are 19 witnesses out of which 18 witnesses are yet to be examined and the fact that the conclusion of the trial is likely to take time moreso, in view of COVID-19 pandemic, this Court deems it appropriate to allow the present petition and grant bail to the petitioner.

Accordingly, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail/surety bonds to the satisfaction of the concerned trial Court/Duty Magistrate and subject to him not being required in any other case.

However, nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail application.

All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid order.

20.12.2021*Pawan***(VIKAS BAHL)
JUDGE****Whether speaking/reasoned:-****Yes/No****Whether reportable:-****Yes/No**