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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-11952-2022 (O&M)

Date of Decision: 22.04.2022

KULWANT SINGH @ BITTU

... PETITIONER

V/S

STATE OF UNION TERRITORY CHANDIGARH

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present: Mr. Mohinder Kumar, Advocate for the petitioner.

Mr. Akashdeep Singh, Addl. P.P. U.T. Chandigarh.

* * *

VIVEK PURI, J. (ORAL)

CRM-14014-2022

This is an application for placing on record Annexures P-8 to P-10. The same are taken on record.

Registry is directed to tag the same at the appropriate place.

Disposed of.

Main case

Custody certificate has been placed on record.

The petitioner is seeking regular bail in case bearing FIR No. 216 dated 24.10.2019 under Section 363 IPC (Sections 376, 506 IPC & Section 6 of POCSO Act added later on) registered at Police Station West, Sector 11, Chandigarh.

Briefly, the case has been registered on the statement of the mother of the victim alleging that the victim was aged about 17 years and on

19.10.2019, she had gone to the college but did not return back. The complainant came to know that the college was closed on that day and the victim had left the house without informing.

Learned counsel for the petitioner contends that the date of birth of the victim is 02.11.2000 and as such, she was more than 18 years of age at the time of occurrence. The petitioner and the victim were in relationship and the victim was a consenting party. The victim had got recorded her statement under Section 164 Cr.P.C. wherein also she has categorically stated that she has eloped with the petitioner of her own free will and was residing with him. Even at the time of her medical examination after her recovery, she had disclosed about her relationship with the petitioner. She further stated that she was not forced to elope with the petitioner and wanted to marry him. It has further been stated that the statement of the victim has been recorded during the course of trial and in the other case which has been registered under Section 376 IPC against the petitioner, he is on bail.

The bail application has been resisted on the score that the statement of the victim under Section 164 Cr.P.C. was again recorded after a period of 10 days from the recording of earlier statement wherein she had imputed that the petitioner had been committing penetrative sexual assault from the period of time when she was 15 years old. Though the victim and her mother have been examined but only 5 out of 22 witnesses have been examined so far.

The date of birth of the victim has been recorded as 02.11.2000 in the statement under Section 164 Cr.P.C. (Annexure P-4) and also stated by her while appearing in the witness-box during the course of trial. At the

time of medical examination, she had disclosed her age to be 19 years. Furthermore, the fact as to whether the victim was aged more than eighteen years and was a consenting party or not will be a debatable and moot point during the course of trial. The custody certificate indicates that the petitioner has undergone incarceration for a period of 02 years, 4 months and 17 days. Out of 22, only 5 witnesses have been examined so far. The petitioner is on bail in the other case which has been registered against him. The statement of the victim and her mother has been recorded. As such, it cannot be construed that he can influence or try to win over them. The conclusion of trial is likely to take some more time and no fruitful purpose would be served by detaining the petitioner in further custody.

Therefore, without making any expression of opinion on the merits of the case, it is ordered that the petitioner be released on regular bail subject to his furnishing fresh bail bonds/surety bonds to the satisfaction of the concerned trial Court/Chief Judicial Magistrate/Duty Magistrate.

The petition is allowed.

22.04.2022

Janki

**(VIVEK PURI)
JUDGE**

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