

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(106+215)

CRM-M-16461-2021(O&M)

Date of Decision: 23.03.2022

Shivam

--Petitioner

Versus

State of Haryana

--Respondent

CORAM:- HON'BLE MR. JUSTICE RAJESH BHARDWAJ.

Present:- Mr. Anuj Arya, Advocate for the petitioner.

Mr. Vishal Kashyap, D.A.G., Haryana.

Mr. Rajesh Duhan, Advocate for the complainant.

RAJESH BHARDWAJ.J (Oral)

Matter has been taken up through video conferencing via Webex facility in the light of the Pandemic Covid-19 situation and as per instructions.

CRM-10846-2022

Application is allowed as prayed for.

Documents Annexures P-3 to P-5 are taken on record.

Main Petition

The present petition has been filed under Section 439 Cr.P.C for grant of regular bail to the petitioner in FIR No.376 dated 13.8.2020 registered under Sections 363, 366 IPC (sections 376(2), (i) and (n) IPC and section 6 of POCSO Act were added later on) at Police Station, Quilla, Panipat.

As per facts of the case, present FIR was lodged by the father of the victim/prosecutrix namely Charan Singh. He alleged that he has 5 children out of which his victim daughter is about 17 years of age. On 12.8.2020 he and his wife went for the work and his daughter was at home.

When they returned in the evening, he found his daughter not present at

home. On inquiry he found that a boy of their village namely Shivam son of Dhanpal had enticed her away on the promise of marriage. A request was made to take legal action against the culprit.

The investigation commenced. During investigation the prosecutrix was recovered on 21.11.2020 from Haridwar. The statement of the prosecutrix was recorded under Section 164 Cr.P.C , wherein she supported the case of the prosecution. The petitioner was arrested on 24.11.2020. He approached learned Addl. Sessions Judge, Fast Track Court, Panipat for grant of bail, however, after hearing the parties, the same was declined vide order dated 7.4.2021. Aggrieved by the same petitioner has approached this court for grant of bail.

Learned counsel for the petitioner has vehemently contended that the petitioner has been falsely and frivolously implicated in the present case. It is submitted that though the petitioner is being prosecuted under the POCSO Act, however, the age of the prosecutrix is in dispute as she was major at the time of alleged occurrence. Counsel submits that after recovery of the prosecutrix she was produced before the Child Welfare Committee, Panipat, where upon having no documentary proof of her age, Ossification Test was carried out, wherein prosecutrix was found to be major. She deposed before the Committee that she does not want to go with her parents and intend to go with her in-laws. Counsel submits that even after her recovery from Haridwar after about 3 months, the prosecutrix never opted to go with her parents and expressed her willingness to go with the petitioner with whom she had married after having eloped from her home. It is submitted that though the father of the prosecutrix had alleged that his victim daughter was below 18 years of age, however, in view of the Aadhar

Card of the prosecutrix, wherein her date of birth has been mentioned as 1.1.2002 and the ossification test got conducted by the Child Welfare Committee, Panipat she was found to be major. Hence the prosecution of the petitioner for the offence under POCSO Act is not sustainable in the eyes of law. Counsel further submits that false implication of the petitioner at the behest of the parents of the prosecutrix is further strengthened from the fact that the prosecutrix has been examined by the Trial Court as PW-1. In her deposition she never supported the case of the prosecution and on the request of learned P.P she was declared hostile. Counsel has also drawn attention of this Court to the deposition of the prosecutrix before the Trial Court wherein she deposed that on 12.8.2020 she had gone to meet Shivam and thereafter they went to Haridwar by bus, where they performed marriage in a temple by exchanging garlands. Thereafter they hired a room in Mahdood Colony, Haridwar and lived there as husband and wife for about 3 ½ months. However, later on they were brought back by the police. She further deposed that Shivam did not force her for physical relationship and the same was consensual. Counsel submits that the age of the prosecutrix is seriously under dispute. Even otherwise she has not supported the case of the prosecution, hence, the petitioner deserves to be enlarged on bail.

Learned counsel for the complainant has vehemently opposed the submissions made by counsel for the petitioner. He submits that the prosecutrix is a minor and she has been allured on the promise of marriage by the petitioner. It is submitted that the alleged consent on the part of the prosecutrix cannot be taken into consideration as the prosecutrix is a minor.

On the other hand learned State counsel on instructions from ASI Manoj Kumar has also opposed the submissions made by counsel for petitioner. He submits that the age of the prosecutrix is less than 18 years. He submits that as per the School Leaving Certificate her date of birth is 16.9.2005 and thus she is a minor and the petitioner has been rightly prosecuted under the POCSO Act. It is further submitted that in the statement recorded under Section 164 Cr.P.C prosecutrix has duly supported the case of the prosecution. However, he candidly acknowledges that during her examination before the Trial Court she has not supported the case of the prosecution. It is further submitted that father of the prosecutrix has stood with his statement recorded earlier and has duly supported the case of the prosecution. It is also submitted that the consent of the prosecutrix has no legal sanctity as she was a minor.

I have heard learned counsel for the parties at length and have gone through the record carefully.

Admittedly, prosecutrix and the petitioner stayed together for about 3 ½ months. Age of the prosecutrix is being questioned by the petitioner seriously. The prosecution has found her below 18 years of age, whereas the petitioner has relied upon the Ossification Test and the age mentioned in the Aadhar Card, however, the same is subject to outcome of the trial. The prosecutrix while appearing before the Trial Court has deposed that she had left her home with the petitioner of her own and they performed marriage in Haridwar and thereafter they stayed together as husband and wife for about 3 ½ months. After her recovery she was produced before the Child Welfare Committee, wherein she emphatically refused to go with her parents and opted to go with her in-laws i.e. the

parents of the petitioner. The Child Welfare Committee, Panipat also considered her major on the basis of Ossification Test carried out. This Court would refrain itself from commenting on the merits of the case and the contentions raised by counsel for both the sides regarding age of the prosecutrix. The petitioner is behind bars since 24.11.2020. In the overall facts and circumstances of the case, this Court finds that counsel for petitioner succeeds in making out a case for grant of bail to the petitioner.

In the totality of facts and circumstances and without making any observation on merits, present petition is allowed. Petitioner be enlarged on bail on his furnishing bail/surety bonds subject to satisfaction of Trial Court/Duty Magistrate, concerned. Nothing stated herein shall be treated as an expression on the merits of the case.

(RAJESH BHARDWAJ)
JUDGE

23.03.2022

lucky

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No