

105+207 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**CRM-7095-2022 in/and
CRM-M-20115-2021
Date of Decision: 25.02.2022**

JAI BHAGWAN ALIAS SETHI ... PETITIONER
VS.
STATE OF HARYANA .. RESPONDENT

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present : Ms. Sharmila Sharma, Advocate
for the petitioner.

Mr. Vikas Bhardwaj, AAG, Haryana.

VIVEK PURI, J.(ORAL)

The matter has been taken up through video-conferencing due to COVID-19 pandemic.

CRM-7095-2022

Prayer in this application is for placing on record copy of statement of victim/prosecutrix dated 18.01.2021 as Annexure P-10.

For the reasons stated in the application, the same is allowed.

Copy of statement of victim/prosecutrix dated 18.01.2021 is taken on record as Annexure P-10, subject to all just exceptions.

Application is disposed of.

CRM-M-20115-2021

Through instant petition, the petitioner is seeking regular bail in case bearing FIR No.19 dated 11.01.2020 initially registered under Section 346 IPC and offences under Section 6 of POCSO Act, Sections 365/342/328/120-B/343/366/366-A/376(2) (3N) IPC were added after investigation and Section 346 IPC was deleted, registered at Police Station Samalkha, District Panipat.

Briefly, the aforesaid FIR has been registered on the basis of the statement of the brother of the prosecutrix alleging that on 09.01.2020, the prosecutrix had gone for some work and had not returned back.

Learned counsel for the petitioner contends that the date of birth of birth of the prosecutrix is 01.01.2002, as recorded in the Aadhaar Card, the prosecutrix was aged 18 years at the time of occurrence and has given improved version during the course of trial. Santosh, the sister and Poonam, the wife of the petitioner, have already been granted regular bail by this Court. Furthermore, in the statement recorded during the course of trial, the version of the prosecutrix is to the effect that the wife of the petitioner had administered some stupefying/intoxicating tea to her and, thereafter, the petitioner had committed rape upon the prosecutrix in the presence of his wife. It has been further argued that it sounds improbable that a person will commit forcible sexual intercourse in the presence of his wife. Furthermore, the petitioner is in custody for a period of 02 years, 01 months and 08 days and only 07 out of 28 witnesses have been examined so far.

Custody certificate of the petitioner has been placed on record.

Learned State counsel, on instructions from ASI Sukhanpal, has opposed the bail application on the score that the date of birth of the prosecutrix as mentioned in School Leaving Certificate is 10.01.2004 and as such, she was less than 16 years of age at the time of occurrence. Moreover, the prosecutrix has levelled allegations of commission of forcible sexual intercourse.

On a query, the learned State counsel has pointed out that as per the report of Forensic Science Laboratory, no spermatozoa was detected.

The date of birth of the prosecutrix as recorded in Aadhaar Card is 01.01.2002 and in such circumstances, the controversy with regard to the age will also be a debatable point during the course of trial. Moreover, the petitioner is in custody for a period of 02 years, 01 months and 08 days, the statement of prosecutrix has already been recorded and only 07 out of 28 witnesses have been examined so far. Furthermore, the conclusion of trial is likely to take some time and no fruitful purpose will be served by detaining the petitioner behind the bars.

Keeping in view the entire facts and circumstances emerging in the case and the period of incarceration undergone by the petitioner, sufficient mitigating circumstances are made out to extend the concession of bail to the petitioner. Accordingly, without making any observation on the merits of the case, the present petition is allowed and petitioner is ordered to be released on bail, subject to his furnishing bail/surety bonds to the satisfaction of concerned trial Court/Chief Judicial Magistrate/Illaq Magistrate/Duty Magistrate.

25.02.2022
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(VIVEK PURI)
JUDGE

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