

CRM-M-22623-2022

Date of decision: 15.07.2022

SAHIM KHAN

...PETITIONER

VERSUS

STATE OF UT, CHANDIGARH

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present: Mr. Pankaj Kaushik, Advocate
for the petitioner.

Mr. Avinash Kumar, Advocate for
Mr. Kuldeep Tiwari, Addl. PP, for UT, Chandigarh.

VIVEK PURI,J. (ORAL)

Custody certificate of the petitioner has been circulated today and
the same is taken on record.

Sahim Khan-petitioner is seeking regular bail in the case bearing
FIR No.10 dated 20.01.2022, under Sections 376(2)(n)/376(3) IPC and Section
6 of POCSO Act, 2012, registered at Police Station Manimajra, Chandigarh.

Learned counsel for the petitioner contends that the petitioner and
victim are governed by Mohammedan Law. They have solemnized marriage and
were happily residing together. In the FIR, the allegations are to the effect that
the victim was aged about 13 years at the time of occurrence.

However, it has been pointed out that as per the birth certificate
Annexure P-3, the date of birth of the victim has been recorded as 01.01.2004.
Consequently, the victim was aged more than 18 years at the time of registration
of FIR and definitely more than 15 years at the time of alleged occurrence. The
petitioner is in custody for a period of 05 months and 24 days. The investigation
of the case is complete and the challan has already been presented.

opposed the bail application on the score that as per the Aadhar Card, the date of birth of the victim has been specified as 18.10.2008.

As per the contents of the FIR, the victim had solemnized marriage with the petitioner. The parties are governed by Mohammedan Law. The date of birth of the petitioner as depicted in the birth certificate indicates that she was more than 18 years of age at the time of registration of FIR. Although, as per the contention of learned Additional Public Prosecutor for UT, Chandigarh, the date of birth of the victim in the Aadhar Card has been mentioned as 18.10.2008. The age of the victim will be a debatable and moot point during the course of trial. The investigation of case is complete, the challan has been presented and charge has been framed. No fruitful purpose will be served by detaining the petitioner in custody. As such, sufficient mitigating circumstances are made out to extend the concession of bail to the petitioner.

Without expressing any opinion on the merits of the case, the instant petition is allowed. The petitioner is ordered to be released on bail on his furnishing requisite bail bonds to the satisfaction of the learned trial Court/Duty Magistrate concerned.

The petition is allowed accordingly.

15.07.2022
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(VIVEK PURI)
JUDGE

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