

CRM-M-34352-2020
CRM-M-9461-2022

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219 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of Decision: 13.05.2022
CRM-M-34352-2020

PAWAN KUMAR ... PETITIONER

V/S

STATE OF PUNJAB ... RESPONDENT

CRM-M-9461-2022

PANKAJ ... PETITIONER

V/S

STATE OF PUNJAB ... RESPONDENT

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present: Mr.H.S.Saggu, Advocate for the petitioner
in CRM-M-34352-2020.

Mr. Ravi Malhotra, Advocate for the petitioner
in CRM-M-9461-2022.

Ms. Ruchika Sabherwal, AAG Punjab.

Mr. Ankit Joshi, Advocate (Legal aid counsel)
for the complainant.

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VIVEK PURI, J. (ORAL)

Custody certificates have been taken on record.

The petitioners, Pawan Kumar and Pankaj are seeking regular
bail in case bearing FIR No. 71 dated 14.04.2017 under Sections 363/366-A
IPC, and later on added Sections 376/376 D IPC, registered at Police Station
Shimlapuri, Police Commissionerate, Ludhiana.

Briefly, the FIR has been registered on the basis of the statement of the mother of the victim alleging that the victim is aged about 20 years. She left the house on 26.03.2017 for some labour work and did not return back.

Learned counsel for the petitioners contend that Pawan Kumar, petitioner is in custody for a period of 4 years, 10 months and 23 days whereas Pankaj, petitioner is in custody for a period of 4 years, 9 months and 21 days. They are not involved in any other case. Furthermore, the statement of the victim under Section 164 Cr. P.C. was recorded on 24.06.2017 wherein it was stated that she had gone with Pawan Kumar of her own will and performed marriage. She has specifically stated that Pawan Kumar has not forced her in any manner. Subsequently, on 18.07.2017, another statement under Section 164 Cr.P.C. was recorded wherein she has imputed allegations of commission of rape against the petitioners.

It has been further stated that during the course of trial, the statement of the prosecutrix was recorded. Thereafter four more persons have been summoned as accused under Section 319 Cr.P.C. Consequently, the trial has to commence afresh and the conclusion of trial is likely to take some time.

Learned State counsel and learned counsel for the complainant has opposed the bail application on the score that the victim was less than 18 years of age at the time of occurrence and there are serious allegations levelled against the petitioners.

Be that as it may, the age of the victim has been specified to be

20 years in the FIR which has been registered at the instance of her mother. The age of the victim will remain a debatable and moot point during the course of trial. Furthermore, the victim had not imputed any allegations with regard to threat or allurement or sexual intercourse much less forcibly sexual intercourse against the petitioners in her first statement under Section 164 Cr.P.C. The petitioners are in custody for a period exceeding 4½ years.

Keeping in view the aforesaid aspect and the period of incarceration undergone by the petitioners, sufficient mitigating circumstances are made out to extend the concession of bail to the petitioners. Therefore, without making any expression of opinion on the merits of the case, it is ordered that the petitioners be released on regular bail subject to their furnishing fresh bail bonds/surety bonds to the satisfaction of the concerned trial Court/Chief Judicial Magistrate/Duty Magistrate.

The petitions are allowed.

13.05.2022

Janki

(VIVEK PURI)
JUDGE

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