

CRM-M-45501 of 2021

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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

213

**CRM-M-45501 of 2021
Date of decision:19.04.2022**

Vikram @ Vicky

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Jai Vir Yadav, Senior Advocate with
Mr. Nitish Sharma, Advocate
for the petitioner.

Ms. Deepshikha Chauhan, AAG, Haryana.

SUVIR SEHGAL, J. (Oral)

Instant petition has been filed under Section 439 Cr.P.C seeking grant of regular bail to the petitioner in case FIR No.300 dated 18.07.2021 registered under Sections 4 and 18 of Protection of Children from Sexual Offences Act, 2012 (for short "POCSO Act"), Sections 34, 363, 366-A, 376, 511 of Indian Penal Code, 1860 (for short "IPC") and Section 3 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "SC/ST Act"), however, Sections 4 and 18 of POCSO Act, Section 366-A IPC have been deleted and Section 6 of POCSO Act, Section 366 IPC have been added later on, similarly, after deleting Section 376 IPC, Section 376-D IPC has been added and Section

3(2)(v) of SC/ST Act has been deleted and instead thereof, Section 3(2) (va) of SC/ST Act has been added later on, at Police Station Beri, District Jhajjar.

Version of the prosecution is that FIR has been registered on the statement of father of a 16 year old school going girl (hereinafter referred to as “the prosecutrix”) on the allegation that after she came back from school, she told her father that Parveen had allured her and taken her on his motorcycle to a room situated near Maroth Nehar and tried to indulge in objectionable activity with her. Two more boys on a motorcycle were also with him and they sat near the room but they did not indulge in any such act. She does not know their names and she belongs to Bawaria Caste, whereas, Parveen is Khati by caste.

Learned senior counsel contends that statement of the prosecutrix was recorded under Section 161 Cr.P.C on 17.07.2021 (Annexure P-1) in support of the allegation, though she refused to get herself internally examined during her medical check-up. He submits that another statement of the prosecutrix was recorded on 19.07.2021 (Annexure P-3), which is supported by her statement under Section 164 Cr.P.C. (Annexure P-4), wherein, she mentioned the name of Parveen and Sonu and stated that they were accompanied by another boy and all three sexually assaulted her. It has been urged that there is a change in the version by the prosecutrix in the subsequent statements. Counsel submits that prosecutrix as well as her father-complainant and even mother of the prosecutrix have been examined and they have turned hostile. In particular, reference has

been made to the testimony of the prosecutrix to argue that she has neither named the petitioner nor has she levelled the allegation of sexual assault against him. Learned senior counsel has also placed reliance upon the order dated 08.04.2022, whereby, co-accused, Ved Parkash @ Vedu has been released on regular bail by the learned Additional Sessions Judge. He submits that though the prosecutrix has been described to be a minor by the prosecution but when she appeared in the witness box, she mentioned her age as 20 years. He asserts that the petitioner, who has a clean past and is in custody since 29.07.2021, deserves to be released on bail.

Opposing the petition, State counsel upon instructions from ASI Vinod Kumar urges that nature of allegations as well as gravity of offence does not warrant grant of bail to the petitioner. She submits that prosecutrix, who was 16 years of age, at the time of alleged incident, has levelled allegations of a very serious nature against the petitioner and co-accused. Reference has also been made by State counsel upon the FSL report to buttress her submission. As per her instructions, 04 out of 33 prosecution witnesses have been examined.

Having considered the submissions made by counsel for the parties, keeping in view the fact that material prosecution witnesses have been examined and the period of incarceration of the petitioner, which by now is more than 08 months and the fact that the trial is likely to take time to conclude as 29 more prosecution witnesses are yet to be examined, this Court is of the view that the petitioner is entitled to be enlarged on bail during the pendency of trial.

Without delving into the merits or demerits of the arguments addressed by counsel for the parties, the petition is allowed and the petitioner is ordered to be released on bail on furnishing bail/surety bonds to the satisfaction of the Trial Court/Duty Magistrate concerned.

It is clarified that any observation made hereinabove shall not be construed to be a reflection of opinion on the merits of the case.

April 19, 2022

savita

(SUVIR SEHGAL)
JUDGE

Whether Speaking/Reasoned	Yes
Whether Reportable	Yes