

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(107+212)

CRM-M-45568-2021(O&M)
Date of Decision: 18.08.2022

Akash

--Petitioner

Versus

State of Haryana

--Respondent

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

Present:- Mr. Atul Yadav, Advocate for the petitioner.

Mr. Neeraj Poswal, A.A.G., Haryana.

RAJESH BHARDWAJ.J (Oral)

CRM-4926-2022

Application is allowed as prayed for.

Documents Annexures P-3 and P-4 are taken on record.

Main Petition

The present petition has been filed under Section 439 Cr.P.C seeking the benefit of regular bail to the petitioner in case FIR No.219 dated 23.7.2020 under section 6 of POCSO Act, registered at Police Station, Sector 56, Gurugram, district Gurugram.

As per factual matrix, the FIR in question was lodged by the owner of the house where the victim was working as a maid. It was alleged in the complaint filed to the police that the victim and her aunt cooked food in his house. Her aunt told them to keep the victim in their home till she comes back from West Bengal. Thereafter, the lock down was imposed and since then the victim girl was staying with them. She told them that she is 16 years of age. A boy namely Akash i.e. the present petitioner was

noticed on the terrace of their house and taking him to be a thief the police was called, however, the victim girl told that the boy had established physical relations with her. A request was made to take legal action against the culprit.

On the complaint made by the complainant, present FIR was lodged and investigation commenced. The statement of the victim under section 164 Cr.P.C was recorded. The petitioner was arrested on 23.7.2020. He approached learned Addl. Sessions Judge, Fast Track Special Court, Gurugram for grant of bail, however, after hearing the parties, the same was declined vide order dated 16.9.2021. Aggrieved by the same petitioner has approached this court for grant of bail.

Learned counsel for the petitioner vehemently contends that petitioner is a young boy of 20 years and he has been falsely implicated in the present case. He submits that without any proof the prosecution has accepted the age of the victim to be less than 18 years and implicated the petitioner for the offence under POCSO Act. He submits that statement of the victim under section 164 Cr.P.C was recorded wherein she deposed that she loved Akash and wanted to live with him. Her father had already passed away and mother had remarried and went back at the place where she was remarried. It was further deposed that she did not want to leave Akash as she did not know anyone else except Akash. Counsel submits that thereafter the Trial Court examined the prosecutrix as PW-7, where she reiterated her deposition as made in the statement recorded under section 164 Cr.P.C. On the request of learned P.P she was declared hostile. Counsel submits that petitioner is behind bars for the last more than two

years and the victim has not supported the case of prosecution. He submits that prosecutrix is also not proved to be a minor. Counsel submits that petitioner has no criminal antecedents and as the material witnesses already stand examined, possibility of the petitioner of influencing the witnesses does not survive and hence he deserves to be granted bail.

On the other hand, learned State counsel on instructions from ASI Desh Raj submits that there are specific allegations against the petitioner. He submits that the victim is 16 years of age and hence she is a minor. He submits that the investigating agency took the victim for medical examination, however, she refused for the same. Her clothes were sent to the FSL for examination and in the report received from FSL human semen was detected. It is submitted that the DNA report in the matter is still awaited. State counsel candidly submits that victim has not supported the case of prosecution neither in her statement recorded under section 164 Cr.P.C nor while appearing as PW-7 before the learned Trial Court. It is submitted that out of the total 17 prosecution witnesses 7 have already been examined including the victim. It is also submitted that petitioner has no criminal antecedents.

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

Admittedly petitioner is behind bars since 23.7.2020. It is also admitted that both petitioner and victim knew each other and they were in consensual relationship as deposed by the victim in her statement under section 164 Cr.P.C as well as before the learned Trial Court while appearing as PW-7. As per the submissions made by learned State counsel petitioner

has no criminal antecedents. The victim refused to undergo medical examination as she did not give her consent for the same. Out of the total 17 prosecution witnesses 7 including the victim have already been examined and hence the possibility of the petitioner of influencing the witnesses does not survive. The veracity of the allegations levelled against the petitioner would be assessed by the Trial Court only upon conclusion of the trial. This court would refrain itself from commenting on the merits of the case, as the allegations and counter allegations would be assessed only after evaluation of the complete evidence to be led by both the sides before the Trial Court. The trial would take sufficiently long time in its conclusion.

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

18.08.2022

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