

SANJAY @ KIRORI

...PETITIONER

VERSUS

STATE OF HARYANA

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present: Mr. Kshitij Sharma, Advocate for the petitioner.

Mr. Dhruv Sihag, AAG, Haryana.

VIVEK PURI, J. (ORAL)

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

Sanjay @ Kirori-petitioner is seeking regular bail in the case bearing FIR No.41 dated 08.02.2021 under Section 346 IPC (Section 346 deleted and Sections 363/420/467/468/471 IPC, 1860 and Section 6 of Protection of Children from Sexual Offences Act, 2012 added during investigation), registered at Police Station Khedki Daula,, District Gurugram.

Briefly, the FIR has been registered on the basis of the statement of the father of the victim alleging that on 07.02.2021, the victim who is aged about 18 years went missing from the house.

Learned counsel for the petitioner contends that as per the Adhaar card, the date of birth of the victim is 02.08.2002 and was more than 18 years of age at the time of occurrence. The case of the prosecution is to the effect that the Adhaar Card is a forged document. Furthermore, in her statement recorded under Section 164 Cr.P.C, the victim had stated that she had accompanied the petitioner of her own free will and consent and solemnized

marriage with him. Besides, she had refused to get herself medico legally examined. The petitioner is in custody for a period of 01 year, 07 months and 12 days. The statement of the victim during the course of trial has been recorded. For the first time during the course of examination-in-chief, she has levelled allegations to the effect that the petitioner forcibly solemnized marriage with her and developed physical relations. However, during her cross-examination, she has again supported the version of the petitioner.

Learned State counsel has opposed the bail application on the score that as per the school record, the date of birth of the victim is 01.09.2004 and the Adhaar card depicting the date of birth of the victim to be 02.08.2002 is forged one. The charge under Sections 467 & 468 IPC has also been framed against the petitioner in this regard. It has also not disputed that the victim and the complainant have been examined during the course of trial. Out of 16, 08 witnesses have been examined. Furthermore, the prosecutrix during the course of her examination-in-chief has supported the version as putforth by the prosecution.

Be that as it may the allegations with regard to solemnizing forcible marriage and developing physical relations have been attributed by the prosecutrix for the first time while appearing in the witness box and during her examination-in-chief. There is categoric statement under Section 164 Cr.P.C indicating that the petitioner had not exercised any threat, pressure or influence upon the victim. The victim had even refused to get herself medico legally examined. The controversy with regard to the date of birth and the genuineness of the Adhaar card will be a debatable and moot point during the course of trial. The petitioner is in custody for a period of 01 year, 07 months and 12 days. Out of 16, 08 witnesses have been examined. Significantly, the victim and the

sometime. No fruitful purpose will be served by detaining the petitioner in further 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.

01.12.2022
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(VIVEK PURI)
JUDGE

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