

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

CRM-M-45733 of 2022 (O&M)

DECIDED ON: 7th December, 2022

Ajay

.....PETITIONER

VERSUS

State of Haryana

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN.

Present: Mr. Rajinder, Advocate for petitioner.

Ms. Geeta Sharma, DAG Haryana.

AVNEESH JHINGAN, J (ORAL)

This is third petition seeking regular bail in case of FIR No. 377 dated 7.11.2020, under Sections 363, 366-A/376 (2)(N), 376 (3), 451 IPC and Section 6 of the Protection of Children from Sexual offences Act, 2012, registered at Police Station Sadar, District Sirsa.

The earlier petition was dismissed by passing a reasoned order on 27.9.2021. The order is reproduced below:-

"Due to COVID-19 situation, the Court is convened through video conference.

This petition under Section 439 Cr.P.C. is filed seeking regular bail in case of FIR No.377 dated 7.11.2020 under Sections 363, 366-A, 376(2) (N), 376 (3), 451 IPC, 1860 and Section 6 of the Protection of Children from Sexual Offences Act, 2012, registered at Police Station Sadar, District Sirsa.

The FIR was lodged by Sonu. As per the contents of the FIR, her sister (name withheld) (hereinafter referred to as 'prosecutrix') aged 15 years had gone out on the night intervening 5/6.11.2020 without informing. The complainant came to know that petitioner had taken her by alluring her with an intention to marry. School Leaving Certificate was produced showing her date of Birth as 15.5.2005.

Learned counsel for the petitioner submits that the petitioner is in custody since 29.11.2020. He relies upon the cross-examination and statement made under Section 164 Cr.P.C. of prosecutrix to show that she accompanied the petitioner of her own sweet Will.

Learned State counsel opposes the prayer for grant of bail. She submits that prosecutrix was 15 years of age. As per FSL report, human semen was detected on slides and swabs pertaining to victim which fortifies the allegations of sexual assault on the victim.

Without commenting on the merits of the case, considering the nature and gravity of offence committed, mere custody cannot be a ground for grant of bail. The contention that the prosecutrix accompanied the petitioner of her own, will be subject matter of trial. Suffice to say that consent of minor for having sexual relationship would not be relevant factor for grant of bail.

Dismissed.

It is clarified that the observations made hereinabove shall not be construed as an expression of opinion on the merits of the case."

The only contention raised by learned counsel for petitioner is the custody period of petitioner should be taken into consideration for granting of bail to the petitioner.

Considering the seriousness of allegations and the fact that the victim was minor, she has supported the case of prosecution and in FSL report human semen was detected, the custody period cannot be the sole ground for granting bail.

Dismissed.

Since the main case has been dismissed, the pending application, if any is rendered infructuous.

(AVNEESH JHINGAN)
JUDGE

7th December, 2022

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Whether speaking/reasoned *Yes*

Whether reportable *No*