

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

207

CRM-M-49636-2022

Date of decision: 16.11.2022

Parveen

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Nikhil Vats, Advocate and
Mr. Surjit Singh, Advocate
for the petitioner.

Mr. Rohit Arya, DAG, Haryana.

MANJARI NEHRU KAUL, J. (ORAL)

This is the second petition filed under Section 439 of the Cr.P.C. for grant of regular bail to the petitioner in case FIR No.174 dated 15.05.2020 under Sections 363, 366 IPC (Section 376(2)(N) IPC and Section 6 of the POCSO Act, 2012 were added lateron) registered at Police Station Sadar, District Fatehabad.

Learned counsel for the petitioner *inter alia* contends that a perusal of the allegations levelled in the FIR in question which has been reproduced in the body of the petition as well as the other sequences of events leading to the recovery of the victim after almost 03 weeks of her going missing, leave no manner of doubt that she had indeed been a consenting party and had accompanied the petitioner of her own accord. Learned counsel submits that no doubt the prosecutrix was a minor aged 16 and a half years, on the date of alleged offence, however, the very fact that the petitioner had been named in the FIR by the complainant, goes a long way to indicate that not only was her family well aware about her relationship with the petitioner but they

were also averse to it and hence she had decided to elope with the petitioner. He has also drawn the attention of this Court to the statement of the prosecutrix recorded under Section 164 of the Cr.P.C. soon after her recovery on 04.06.2020 wherein she did not level any allegations of wrong doing against the petitioner and still further it was after 11 days on 15.06.2020, that she got her second statement recorded under Section 164 of the Cr.P.C. wherein for the first time she levelled allegations against the petitioner of enticing her away from her house and thereafter violating her person during their stay together. Learned counsel thus submits that the prosecutrix having been pressurized to level false allegations against the petitioner was thus clearly discernible. Learned counsel further submits that it was a matter of record that the prosecutrix even refused to get herself subjected to medical examination which further creates a dent in the case of the prosecution. He submits that the petitioner has been in custody for almost two and a half years having been arrested on 19.06.2020 and there is no likelihood of the trial concluding in the near future as 14 prosecution witnesses out of the 22 cited remain to be examined. Learned counsel has also submitted that since the prosecutrix and the complainant who are only the two material witnesses stand examined, petitioner's further incarceration would serve no useful purpose moreso when the trial would take considerable time to conclude.

Per contra, learned State counsel on instructions while opposing the prayer and submissions made by the counsel opposite, submits that the prosecutrix, who admittedly was a minor on the date of alleged occurrence had been enticed away by the petitioner, who

thereafter repeatedly violated her person which fact finds due corroboration from the FSL report which has been annexed as Annexure P-5 wherein human semen was detected on the *salwar* of the prosecutrix. Learned State counsel has, however, not been able to controvert the submissions made by the counsel opposite that while getting her first statement recorded under Section 164 of the Cr.P.C., the prosecutrix had not levelled any allegations whatsoever against the petitioner much less of the alleged sexual assault. He has also not disputed that both the prosecutrix and her father, who are the only material witnesses stand examined before the Trial Court.

I have heard learned counsel for the parties and perused the relevant material on record.

The petitioner has been in custody since 19.06.2020 and the trial is unlikely to conclude in the near future as only 08 prosecution witnesses out of the 22 cited have been examined so far. Since both the material witnesses stand examined, further incarceration of the petitioner in the circumstances, would serve no useful purpose.

In the facts and circumstances as enumerated hereinabove, the instant petition is allowed. The petitioner be admitted to bail to the satisfaction of the trial Court/Duty Magistrate concerned. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

16.11.2022

Vinay

(MANJARI NEHRU KAUL)
JUDGE

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