

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(214)

2023:PHHC:043175
CRM-M-2731-2023
Date of Decision: 23.03.2023
--Petitioner

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Versus

State of Haryana

--Respondent

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

Present:- Mr. Abhishek Jindal, Advocate for the petitioner.

Mr. Amit Aggarwal, DAG, Haryana.

RAJESH BHARDWAJ.J (Oral)

This is the second petition filed under Section 439 Cr.P.C seeking the benefit of regular bail to the petitioner in case FIR No.98 dated 17.3.2021 under sections 6, 8 of POCSO Act and sections 363, 366, 328, 506, 34 IPC, registered at Police Station, Badshahpur, District Gurugram. The earlier petition i.e. CRM-M-3840-2022 was allowed to be withdrawn by this court vide order dated 27.7.2022.

As per factual matrix, a complaint was lodged by the father of the prosecutrix namely Khajan Singh, wherein it was alleged that his minor daughter was 15 years of age and on 16.3.2021 at about 5 PM she went to the shop and did not come back. It was suspected that she had been taken away by A i.e. the petitioner. A request was made to take legal action against the culprit.

On the basis of the complaint, present FIR was lodged and investigation commenced. During investigation, prosecutrix was recovered from Delhi on 18.3.2021. On her recovery she was produced before the learned JMIC, Gurugram and her statement under section 164 Cr.P.C was

recorded. She was medically examined and statements of the witnesses were also recorded. Petitioner was arrested on 26.5.2021. An application was filed on behalf of the petitioner declaring him to be a juvenile as he was less than 18 years of age at the time of occurrence. As per record, his date of birth was shown to be 16.7.2003 and as such on the basis of the same he was a juvenile on the date of occurrence. As per order passed by the learned Juvenile Justice Board, Gurugram vide order dated 21.5.2021 petitioner was directed to be treated as an adult. Petitioner approached learned Children' Court, Gurugram for grant of bail, however, after hearing the parties, the same was declined vide order dated 8.11.2021. Aggrieved by the same petitioner approached this court for grant of bail by filing CRM-M-3840-2022, however, the same was allowed to be withdrawn vide order dated 27.7.2022. Hence this second petition.

Learned counsel for the petitioner vehemently contends that petitioner before this court is a juvenile being less than 18 years of age. He submits that as per case of the prosecution the prosecutrix went missing from her home on 16.3.2021 and two days thereafter she was recovered from Delhi on 18.3.2021. He submits that prosecutrix was medically examined, however, after perusing the medical record no offence under Section 6 of POCSO Act read with section 376 IPC is made out as the allegations made in the FIR are not medically corroborated. Counsel submits that though the petitioner was directed to be treated as an adult, however, it cannot be denied that he was less than 18 years of age at the time of occurrence. It is submitted that as per provisions of Section 12 of the Juvenile Justice Act a juvenile cannot be denied bail irrespective of the nature of offence. It is further submitted that as on date all the material

witnesses including the prosecutrix and complainant already stand examined by the Trial Court and hence the petitioner is not in a position to influence them. Counsel further submits that the learned Trial Court has wrongly observed that family members of the petitioner are not taking any responsibility of the petitioner in case he is granted bail. It is submitted that parents of the petitioner are present in the court and they are ready to take every responsibility of the petitioner in case he is granted bail so as to ensure that he does not come in contact with any anti-social element after having been granted bail. Counsel submits that future of the petitioner is also at stake and keeping in view the overall facts and circumstances of the case, petitioner deserves to be enlarged on bail.

On the other hand, learned State counsel on instructions from ASI Priyanka has submitted that there are specific allegations against the petitioner. He submits that as per case of the prosecution the petitioner had allured the minor prosecutrix from her home and she was taken to Delhi, where she was administered alcohol by the petitioner and the co-accused and thereafter petitioner forcibly committed sexual intercourse with her. He submits that by no stretch of imagination the relationship can be said to be consensual in nature as the prosecutrix is a minor in this case. It is submitted that out of the total three accused two including the petitioner have been arrested, however, the third accused namely Rahul is yet to be arrested. It is submitted that in all there are 20 prosecution witnesses out of which 12 have already been examined by the Trial Court including the prosecutrix and the complainant and both these witnesses have duly supported the case of prosecution. However, State counsel has fairly submitted that petitioner was less than 18 years of age at the time of

occurrence. It is submitted that petitioner has no criminal antecedents.

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

After perusing the record, it is evident that petitioner was less than 18 years of age at the time of occurrence, however, he was directed to be tried as an adult. The prosecutrix though, a minor but has already been examined by the Trial Court. Her father, who was author of the FIR also stands examined. As the material witnesses already stand examined, petitioner would not be in a position to influence them. This court cannot ignore the fact that petitioner is a juvenile and he has no criminal antecedents. Court has also interacted with the parents of the petitioner, who are present in person in court and they have assured the court that they owe every responsibility of the petitioner and would ensure that he does not come in contact with any anti social element. Keeping in view the tender age of the petitioner, his future cannot be ignored by this court. Parents of the petitioner have brought to the notice of the court that at the time of occurrence petitioner was studying in 9th standard. The long incarceration of the petitioner in this phase of his life can be counter/productive.

This court would refrain itself from commenting anything on the merits of the case, as the allegations and counter allegations would be assessed only after evaluation of the complete evidence 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. State as well as parents of the petitioner would ensure that petitioner does not misuse the concession of bail and does not come in contact with any anti social element. Nothing stated herein shall be treated as an expression on the merits of the case.

(RAJESH BHARDWAJ)
JUDGE

23.03.2023
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Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No