

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

216

CRM-M-4825-2023

Date of Decision: 13.03.2023

Anil Kumar

...Petitioner

Versus

State of U.T. Chandigarh

...Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Deepak Singh Saini, Advocate with
Ms. Vibha Nagar, Advocate with
Ms. Mahek Jain, Advocate for the petitioner
Mr. Ashu Mohan Punchhi, P.P., U.T., Chandigarh

JAGMOHAN BANSAL, J. (ORAL)

1. The petitioner, through instant petition under Section 439 Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') is seeking regular bail in FIR No.0001 dated 01.01.2023 under Sections 376(2)(n) of Indian Penal Code, 1860 (for short 'IPC') and Section 6 of Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act') registered at Police Station Mauli Jagran, U.T., Chandigarh.
2. The case of the prosecution is that FIR has been registered against the petitioner on account of commission of offence punishable under Section 376 (2)(n) of IPC read with Section 6 of POCSO Act. The prosecutrix got pregnant and the child has been aborted.
3. Learned counsel for the petitioner, *inter alia* contends that prosecutrix and her family members are not supporting case of the prosecution. The prosecutrix in her statement under Section 164 Cr.P.C.

has categorically stated that petitioner did not develop physical relations with her against her wishes. She wants to perform marriage with him. The petitioner is a 19 years old boy and everything has taken place with the consent of both sides. The prosecutrix is a minor, however, she at the time of alleged incident was 17 years and 9 months old. The petitioner is not involved in any other offence. He is in custody since 01.01.2023. The family of the petitioner and family of the prosecutrix want to perform marriage of the petitioner with the prosecutrix. There is no possibility of flee from justice.

4. Custody certificate dated 11.03.2023 is taken on record. Registry is directed to tag the same at appropriate place.

5. Learned State Counsel submits that police report has already been filed. He further submits that there are 23 witnesses and charges are yet to be framed. He does not dispute the factum of relation of both the families, however, he submits that it is a case of minor, thus, there are all possibilities of conviction.

6. In the case in hand, the petitioner is a 19 years old boy and prosecutrix at the time of alleged incident was 17 years and 9 months old. In her statement under Section 164 Cr.P.C., the prosecutrix had specifically stated that she wants to perform marriage with the petitioner and he has not developed relations against her wishes. Both the parties are *ad idem* that families of petitioner and prosecutrix want to perform marriage of petitioner with the prosecutrix. The petitioner is in custody

since 01.01.2023. There are 23 witnesses and charges are yet to be framed, thus, there is abysmally low possibility of conclusion of trial in near future. FSL report is still awaited. As prosecution has right to arrest, investigate the matter and restrain an accused from manipulating or winning over witnesses, similarly accused in view of Article 21 of the Constitution of India has right to defend himself and put forth his stand which cannot be possible while in custody. The petitioner is not involved in any other criminal case. The prosecution has not led any convincing/plausible documentary or oral evidence indicating possibility of petitioner being flee from justice or tampering the evidences or winning over/threatening the witnesses;

7. In view of afore-stated facts and circumstances, this Court is of the considered opinion that present petition deserves to allowed and accordingly allowed. The petitioner is ordered to be released on bail subject to conditions as may be imposed by Trial Court/Illaq/Duty Magistrate concerned.

8. Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and Trial Court shall proceed without being prejudiced by observations of this Court.

(JAGMOHAN BANSAL)
JUDGE

13.03.2023
Mohit Kumar

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>