

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-7263-2023(O&M)
Date of decision:- 28.11.2023

Rajan Dubey

... Petitioner

Versus

State of Haryana

.. Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr.Bikram Chaudhary, Advocate
for the petitioner.

Mr.Munish Sharma, DAG, Haryana.

SUVIR SEHGAL, J. (ORAL)

CRM-49715-2023

Application is allowed, as prayed for.

Deposition of PW4 to PW8 is taken on record as Annexures P7 to
P11.

CRM-M-7263-2023

1. This second petition has been filed under Section 439 Cr.P.C.
seeking grant of post-arrest bail in:-

FIR No.	Dated	Police Station	Sections
184	20.03.2021	Mujessar, Faridabad	363, 366A IPC and Section 6 of Protection of Children From Sexual Offence Act, 2012

2. Case of the prosecution is that FIR, Annexure P1 has been registered on the complaint of father of a 14 years old girl (for short “the prosecutrix”) stating that in the morning hours of 23.03.2021, Rajan Dubey, present petitioner, who is a neighbour, has enticed his daughter. He requested that she may be located.

3. Counsel for the petitioner submits that case of the prosecution is that the prosecutrix was recovered from Bihar and brought to Faridabad but she refused to undergo medical examination. In particular, he has made a reference to the testimony of the doctor, who has been examined on 09.12.2022, Annexure P11, after the withdrawal of the first petition in August, 2022. By relying on the testimony of the prosecutrix, PW1, counsel urges that the prosecutrix had voluntarily gone with the petitioner and stayed with him. He submits that even in her statement recorded under Section 164 Cr.P.C., she has stated that she had married the petitioner and they were living together. Counsel submits that the prosecutrix in fact had attained the age of majority and the school certificate being relied upon by the prosecution is not based on any authentic proof. He asserts that the petitioner, who has a clean past and is in custody since 29.06.2021 deserves to be enlarged on bail.

4. *Per contra*, learned State counsel, upon instructions and by making reference to the status report filed by way of affidavit of Assistant Commissioner of Police, Mujesar, Faridabad has opposed the petition. He submits that there are serious allegations against the petitioner of taking advantage of a minor girl. As per his instructions, prosecution possesses the school record of the prosecutrix to show that her date of birth is 02.07.2007.

He submits that eight out of seventeen prosecution witnesses including the prosecutrix and her father – complainant have been examined.

5. I have heard and considered the submissions made by counsel for the parties.

6. The age of the prosecutrix and her consent to enter into physical relationship with the petitioner would be matters to be adjudicated by the trial Court on the basis of documentary and ocular evidence adduced by the prosecution. Petitioner has been in custody for the last more than 28 months, vital prosecution witnesses have been examined and the trial is not likely to conclude in the near future. Noticing these factors, this Court is inclined to accept the prayer made in the petition.

7. Without adverting to the merits or demerits of the arguments addressed by counsel for the parties, petition is allowed. Petitioner is ordered to be released on bail on furnishing bail/surety bonds to the satisfaction of the Trial Court/Duty Magistrate, concerned. The petitioner shall furnish a solvent local surety to the satisfaction of the Trial Court/Duty Magistrate, concerned.

8. It is clarified that nothing said hereinabove shall be construed to be an expression of opinion on the merits of the case.

(SUVIR SEHGAL)

JUDGE

28.11.2023

Brij

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No