

CRM-M-7781-2023

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

CRM-M-7781-2023 (O&M)

Date of Decision: 25.09.2023

SAGAR

...Petitioner

V/S

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Rajesh Nain, Advocate
for the petitioner.

Ms. Mayuri Lakhanpal Kalia, DAG Haryana.

HARPREET SINGH BRAR J. (Oral)

1. The petitioner seeks grant of regular bail under Section 439 of Cr.P.C. in the case bearing FIR No. 88 dated 21.02.2022 under Sections 452, 506 of Indian Penal Code and Section 8 of POCSO Act 2012 (Section 363, 366-A of IPC, Section 4 of POCSO Act and Section 3(2)(v) of SC/ST Act 1989 added later on) registered at Police Station Nissing, District Karnal.

2. Learned counsel for the petitioner inter alia contends that the petitioner has been falsely implicated in the present FIR as the entire story is a concocted one, rather the prosecutrix and the petitioner were in a relationship and he relies upon Annexure P-2 i.e. the whatsapp chat. The learned counsel for the petitioner contends that the Annexure P-2 would reveal that there were several missed video calls and the prosecutrix has been sending several messages to the petitioner, which clearly indicates that both the petitioner and the prosecutrix were in

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relationship with each other. Learned counsel further contends that there is no medico-legal examination report to substantiate the allegations contained in the FIR as the prosecutrix had refused to undergo medico-legal examination and prosecutrix is more than 18 years of age. A photocopy of the date of birth certificate has been provided by the father of the prosecutrix and it would be debatable as to whether it passes the test for determination of the age as required under Sub-Section (2) of Section 34 of the POCSO Act. The petitioner is behind the bars since 25.02.2022.

3. Per contra, Learned State counsel has opposed the bail application of the petitioner on the ground that the prosecutrix has been examined and duly supported the case of the prosecution. The prosecutrix is more than 17 years of age but below 18 years and the petitioner is accused of a heinous crime under POCSO Act and as such does not deserve to be released on regular bail.

4. Having heard learned counsel for the parties and keeping in view the fact that petitioner is behind the bars since 25.02.2022 and out of total 19 prosecution witnesses, only 06 have been examined so far. The conclusion of trial is likely to take long time. It would be a moot point to be determined by the learned trial Court as to whether the whatsapp chat produced as Annexure P-2 would be sufficient to rebut the presumption attracted under Section 29 and 30 of the POCSO Act.

5. As such, sufficient mitigating circumstances are made out to grant the petitioner, concession of bail. Therefore, without making any expression of opinion on the merits of the case, lest it may prejudice the

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outcome of the trial, the petitioner is ordered to be released on regular bail subject to his furnishing requisite bail bonds/surety bonds to the satisfaction of the concerned trial Court/Chief Judicial Magistrate/Duty Magistrate.

6. The petition is allowed.
7. Nothing expressed hereinabove would be construed to be an expression of opinion on the merits of the case.

25.09.2023
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

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