

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

Sr. No.: 286

CRM-M-10131-2023

Date of Decision: April 24, 2023

ANOOP KUMAR ALIAS ANUP

....PETITIONER(S)

VERSUS

STATE OF HARYANA

...RESPONDENT(S)

...

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

...

PRESENT: Mr. Vikas Bishnoi, Advocate
for the petitioner.

Ms. Trishanjali Sharma, DAG, Haryana.

TRIBHUVAN DAHIYA, J(ORAL)

1. This is a petition under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR No.18 dated 19.01.2023 under Sections 366, 363 and 34 IPC, 1860, (Section 376 (2) (n) of IPC, 1860, Section 6 of POCSO Act, 2012 and Section 9 of Child Marriage Act have been added later on), registered at Police Station Sadar Ratia, District Fatehabad.

2. Briefly, the allegations levelled by the complainant's father are, his daughter aged 17 years, was pursuing JBT Course in the college. She did not return home in the evening on 16.01.2023. The complainant tried to locate, but she could not be found. He came to know that the petitioner has taken her along with his other companions. She also took away 3 tolas of gold and Rs.25,000/- from home. It was requested that action may be taken in the matter.

3. Learned counsel for the petitioner contends that the victim has

wrongly been mentioned as 17 years of age, only to invoke provisions of POCSO Act in the matter. In fact, her date of birth is 30.09.2004 as per the matriculation certificate dated 10.07.2020. Besides, in the Family ID , dated 01.12.2021, also the complainant himself has stated the victim's date of birth as 30.09.2004. It is further submitted that the victim willingly accompanied the petitioner on 16.01.2023, and the two got married. The pictures of their marriage have been placed on record as Annexure P-2-A. As they apprehended threat to their lives, both of them approached the Sessions Court at Fatehabad, by filing case No.5 dated 16.01.2023 seeking protection of their life and liberty. Appropriate directions were issued by the Sessions Court vide order dated 16.01.2023 (Annexure P-8). Before the Sessions Court also, the victim filed an affidavit declaring herself to be 19 years of age. The petitioner is in custody since 25.01.2023, and despite lapse of 89 days from the date of arrest of petitioner, challan has not been presented by the Investigating Agency. The petitioner has no other case pending against him.

4. Learned State counsel on instructions from ASI Sulochna opposes the grant of bail by submitting that as per the date of birth certificate issued by the Municipality concerned, the victim's date of birth is 25.10.2005, which shows she was a minor at the time of alleged occurrence. The fact has been verified from the hospital also. She disputes the facts submitted by learned counsel for the petitioner, including the Matriculation Certificate and the Family ID.

5. The submissions made by learned counsel for the parties have been considered.

6. There are different versions regarding the victim's date of birth. In any case, she was admittedly more than 17 years of age on the date of alleged occurrence. Her exact date of birth will be debated during trial. It is

also on record that she, alongwith the petitioner, sought protection of her life and liberty after getting married. Challan has not been presented despite the petitioner having been arrested on 25.01.2023. In these circumstances, no useful purpose will be served by confining the petitioner to custody any longer, who has no criminal antecedents.

7. Accordingly, petition is allowed and the petitioner is directed to be released on regular bail subject to the satisfaction of the trial Court/Duty Magistrate concerned.

(TRIBHUVAN DAHIYA)
JUDGE

April 24, 2023
PrinceChawla

Whether Speaking/Reasoned:
Whether Reportable:

Yes/No
Yes/No