

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

[CRM-M-12723-2022 \(O&M\)](#)

Date of decision: 12.04.2023

MosimPetitioner

versus

State of HaryanaRespondent

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. Surender Dhull, Advocate
for the petitioner.

Ms. Ankita Ahuja, AAG, Haryana.

TRIBHUVAN DAHIYA, J. (ORAL)

This petition is for grant of regular bail in a case bearing FIR No.37 dated 25.06.2020 (Annexure P-1) under Sections 323/365/376/450/506 of Indian Penal Code and Section 6 of POCSO Act registered at Police Station Women Palwal, District Palwal.

2. As per the allegations in the FIR, lodged by the victim, aged 14 years, are, while she was sleeping at night on 21.06.2020, she was taken by the petitioner to his house and raped. Again on 24.06.2020, the petitioner took her to his room and raped her. It is also mentioned that on similar allegations FIR No.214 of 2019 was earlier lodged, and the petitioner forced her to compromise the matter. However, few days thereafter, the offence was repeated.

3. Learned counsel for the petitioner contends that the petitioner and the complainant were known to each other and their relations were consensual. They had even approached this Court by filing a petition, CRWP No.5155 of 2020,

seeking protection of their life and liberty after getting married against the wishes of their parents and relatives. The petition was filed by the complainant claiming herself to be major by attaching documentary proof/Aadhar Card. It was disposed of vide order dated 23.07.2020 (Annexure P-3) by issuing the appropriate directions to the authorities concerned. It is, further submitted that apart from FIR No.214 of 2019, another FIR No.40 of 16.07.2020 was lodged on similar allegations by the complainant's mother. This shows the complainant and her family are bent upon implicating the petitioner by levelling allegations, which are per se not believable. Besides, the petitioner is in custody since 31.07.2020; and the prosecutrix has already been examined.

4. Learned State counsel, on instructions from PSI Poonam, opposes the grant of bail on the ground that trial of the case is going on, and thirteen out of twenty prosecution witnesses have already been examined; DNA report is still awaited. It is further submitted that there is no other case pending against the petitioner apart from the cases mentioned above which pertain to similar offences against the complainant.

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

6. Age of the prosecutrix remains debatable since she has herself approached this Court by filing the protection petition. Culpability of the petitioner is a matter of trial which is not likely to conclude in the near future as seven prosecution witnesses still remain to be examined. The petitioner is in custody for more than two years and eight months, and no purpose will be

served by confining him to custody any longer, especially when material witnesses of the prosecution already stand examined.

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

12.04.2023
Neha

(TRIBHUVAN DAHIYA)
JUDGE

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