

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(216)

CRM-M-12651-2023 (O&M)
DATE OF DECISION:- 08.11.2023

AFTAB @ IRFAN

...PETITIONER

VERSUS

STATE OF HARYANA

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Ms. Sharmila Sharma, Advocate for the petitioner.

Mr. Ankita Ahuja, AAG, Haryana for the State-respondent.

SUVIR SEHGAL, J. (Oral)

CRM-46496-2023

1.
- Application is allowed as prayed for.
2.
- FSL report is taken on record as Annexure P-7.

Main case

1.
- This is the second petition, preferred by the petitioner, under Section 439 of the Code of Criminal Procedure, 1973 seeking grant of regular bail during the pendency of trial in:-

FIR No.	Dated	Police Station	Sections
234	22.07.2021	DLF Phase-1, Gurugram	346, IPC (which was deleted, later on) Section 363, 366, IPC and Section 6 of the POCSO Act, 2012 were added, later on

2.
- Case of the prosecution is that FIR, Annexure P-1, has been registered on the statement of father (complainant) of a young girl (for short “the prosecutrix”) alleging that his daughter, who is a student of 9th class, left her paternal home in the noon on 22.07.2021 to make some purchases from Sikandarpur Market, but did not return. The missing girl was recovered from the house of Aftab @ Irfan, present petitioner, on 04.08.2021, she was medically examined, her statement was recorded and

on completion of investigation, challan was submitted under Section 363, 366, IPC and Section 6 of the POCSO Act.

3. By making a reference to the testimony of the prosecutrix as well as her father, who have been examined as PW-3 and PW-4, counsel urges that no allegation has been levelled against the petitioner. It has been argued that the prosecutrix left her paternal house as she was annoyed with her parents and she was neither induced nor abducted by the petitioner. Counsel asserts that the prosecutrix has in the meanwhile attained majority and the petitioner never intimidated her. It has been claimed that she was in a consensual relationship with the petitioner and of her own volition started living with him. It is the case of the petitioner that as all the star prosecution witnesses have been examined and have been declared hostile, there is no evidence against the petitioner, who deserves to be enlarged on bail as he is in detention since 05.08.2021.

4. *Per contra*, State counsel, upon instructions received from ASI, Hariom, has opposed the petition and submits that there are specific allegations of a grave offence committed by the petitioner against a minor. She submits that the mere custody of the petitioner would not entitle him to be released on bail. She has filed Custody Certificate.

5. I have considered the submissions made by counsel for the parties as well as examined the material placed on record.

6. After her recovery, the prosecutrix in her statement under Section 164, Cr.P.C, has stated that the petitioner has sexually assaulted her. Although, in her deposition and in the testimony of her father, it has been stated that petitioner did not commit any wrong and the prosecutrix came back home of her own on 04.08.2023, but a perusal of the documentary evidence shows that both the witnesses have probably been

won over by the accused. The conclusion reached at by the Regional Forensic Science Laboratory, Bondsri, Gurugram in its report dated 24.08.2021, Annexure P-7, is reproduced as under:-

“The Autosomal STR analysis indicates that DNA profile of seminal stains on source of item No. 2 (underwear) is matching with the DNA profile of source No.4 (stated to be blood sample of accused).”

7. In the history recorded before the examining doctor, the prosecutrix alleged sexual abuse by the present petitioner, who was in contact with her on facebook for the last six months. She has further stated that she was in a relationship with him and on 23.07.2021, she went with him to Kanpur where she had multiple episodes of sexual intercourse with him. The doctor, who had examined the prosecutrix in her examination, has also stated that the possibility of sexual assault cannot be ruled out. The medical evidence produced by the prosecution before the Trial Court cannot be lightly discarded. Presumption under Section 29 of the POSCO Act is also against the petitioner, who is a mature man of 32 years of age and had taken an advantage of a young girl, whom he befriended on social media.

8. Keeping in view the nature of allegations levelled against the petitioner, gravity and seriousness of the offence allegedly committed by him upon a minor, this Court is of the view that second attempt at seeking regular bail deserves to fail.

9. Petition is accordingly dismissed.

10. Needless to mention, any observation made above is solely for the purpose of adjudication of the bail petition and the Trial Court shall not be influenced therewith.

08.11.2023

Kamal

(SUVIR SEHGAL)

JUDGE

Whether speaking/ reasoned	Yes/ No
Whether Reportable	Yes/ No