

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

204

**CRM-M-19714-2022
Date of decision: 19.01.2023**

Mosim

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

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

Mr. Rahul Mohan, DAG, Haryana.

MANJARI NEHRU KAUL, J. (ORAL)

This is the second petition filed under Section 439 of the Cr.P.C. for grant of regular bail to the petitioner in case FIR No.40 dated 16.07.2020 lodged under Sections 365, 363, 366-A, 376, 120-B and 212 of the IPC and Section 6 of the POCSO Act registered at Police Station Women Palwal, District Palwal.

This is the second petition filed by the petitioner seeking similar relief the previous one having been dismissed on 19.08.2021.

On a pointed query put to the learned counsel for the petitioner as to what was the material change in circumstances subsequent to the dismissal of the previous petition, he submits that 10 witnesses out of the 22 cited have been examined which also includes the victim.

Learned counsel submits that in fact it was a case of consensual relationship between the victim and the petitioner and the petitioner had been falsely implicated in the case in hand which was evident from a bare perusal of the allegations levelled in the FIR in

question. He further submits that the victim was not 14 years of age as had been alleged by the complainant but was more than 17 years of age which fact found due corroboration from her Aadhaar Card. He still further submits that there was no likelihood of the trial concluding in the near future as 12 prosecution witnesses out of the 22 cited remain to be examined and since the sole material witness i.e. the victim stands examined, further incarceration of the petitioner would serve no useful purpose.

Per contra, learned State counsel while opposing the prayer and submissions made by counsel opposite on instructions from ASI Kavita, has submitted that the victim was a 14 year old girl and even assuming that she had been in a consensual relationship with the petitioner, being a minor, her consent would be inconsequential. He further submits that while stepping into the witness box, the victim supported the case of the prosecution in toto coupled with the fact that it found due corroboration with the medical evidence. Learned State counsel has on further instructions apprised this Court that the petitioner was involved in two other criminal cases, however, in one of them a compromise stood effected. The submissions made by the counsel opposite that the victim was not 14 years old but close to 17½ years have been controverted by the learned State counsel who has submitted that in her birth certificate the date of birth is shown as 20.09.2005 and hence, there can be no manner of doubt she was about 14 years on the date of alleged occurrence. A prayer has, therefore, been made for dismissal of the instant petition as the trial in all likelihood would not take much time to conclude since only formal

witnesses remain to be examined.

I have heard learned counsel for the parties and perused the material placed on record.

Prima facie there are serious and specific allegations levelled against the petitioner of having first enticed away a minor and thereafter repeatedly violated her person which fact as per instructions received by the learned State counsel finds due corroboration with the medical evidence. In addition to this, the victim while stepping into the witness box has supported the case of the prosecution in its entirety. This Court does not thus deem it fit in the aforementioned facts and circumstances to extend the concession of bail to the petitioner

Dismissed.

However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

19.01.2023

Vinay

(MANJARI NEHRU KAUL)
JUDGE

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