

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

215

CRM-M-18047-2023

Date of Decision: 21.04.2023

Vishal

...Petitioner

Versus

State Of Haryana and Another

...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Naveen Chopra, Advocate for the petitioner

Ms. Priyanka Sadar, AAG, Haryana

JAGMOHAN BANSAL, J. (ORAL)

1. The petitioner through instant petition under Section 439 Code of Criminal Procedure, 1973 (for short '**Cr.P.C.**') is seeking concession of regular bail in FIR No.338 dated 16.11.2021 under Sections 363 & 366-A of Indian Penal Code, 1860 (for short '**IPC**') [Sections 376(2)(n) of IPC and Sections 4 & 6 of Protection of Children from Sexual Offences Act, 2012 (for short '**POCSO Act**') added later on] registered at Police Station Sector 13/17 Panipat, District Panipat.

2. The case of the prosecution is that on 16.11.2021, father of the victim lodged a complaint alleging that he is a labourer. His daughter, who is 17 years old and studying in 10+2, had gone to school but did not return. Some unknown boy has enticed her on the pretext of marriage. FIR was initially registered under Sections 363 & 366-A of

IPC. During investigation, victim was recovered and Sections 376 IPC as well as 4 & 6 of POCSO Act were added in the FIR.

3. Learned counsel for the petitioner, *inter alia* contends that prosecutrix and complainant have turned hostile. The prosecutrix in her examination has disclosed her age 19 years and in the FIR, it is wrongly noted as 17 years to invoke rigour of Section 4/6 of POCSO Act. The petitioner is in custody since 22.11.2021 and he is not involved in any other crime. The petitioner has been wrongly implicated in the commission of alleged offence. There is no possibility of flee from justice.

4. Learned State counsel submits that police report has already been filed and charges stand framed. She further submits that out of 18 witnesses, 5 have already been examined which includes prosecutrix and complainant. She fairly concedes that material witnesses have turned hostile.

5. In the case in hand, the petitioner is in custody since 22.11.2021 and he is not involved in any other crime, as confirmed by learned State counsel. The material witnesses stand examined and they have turned hostile. The age of the prosecutrix, in view of statements of prosecutrix and Investigating Officer, is disputed. The Trial Court yet has to return definite findings on the disputed issues. There are 18 prosecution witnesses and till date only 5 have been examined, thus, there is abysmally low possibility of conclusion of trial in near future. As

prosecution has right to arrest, investigate the matter and restrain an accused from manipulating or winning over witnesses, similarly accused in view of Article 21 of the Constitution of India has right to defend himself and put forth his stand which cannot be possible while in custody. The prosecution has not led any convincing/plausible documentary or oral evidence indicating possibility of petitioner being flee from justice or tampering the evidences or winning over/threatening the witnesses.

6. In view of afore-stated facts and circumstances, this Court is of the considered opinion that present petition deserves to be allowed and accordingly allowed. The petitioner is ordered to be released on bail subject to conditions as may be imposed by Trial Court/Illaq/Duty Magistrate concerned.

7. Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and Trial Court shall proceed without being prejudiced by observations of this Court.

(JAGMOHAN BANSAL)
JUDGE

21.04.2023
Mohit Kumar

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>