

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

213

CRM-M-19184-2023

Date of Decision: 16.05.2023

Vishal

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Mukesh Yadav, Advocate with
Mr. Lalit Kumar Yadav, Advocate for the petitioner

Ms. Priyanka Sadar, AAG, Haryana

JAGMOHAN BANSAL, J. (ORAL)

1. The petitioner, through instant petition under Section 439 of Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') is seeking concession of regular bail in FIR No.274 dated 19.07.2022 under Section 6 of Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act') (Section 18 of POCSO Act added later on) registered at Police Station Badshahpur, Gurugram, District Gurugram.

2. The case of the prosecution is that on 19.07.2022, mother of the prosecutrix lodged a complaint alleging that she hails from District Hathras (Uttar Pradesh) and presently, she is residing in a rented accommodation at Fazilpur. She and her husband are labourers. She is blessed with four children. Her younger daughter was sad for quite some days and on inquiry she disclosed that their neighbour Vishal who is residing in a rented accommodation is harassing her for last one and half year by committing rape upon her.

3. Learned counsel for the petitioner, *inter alia* contends that prosecutrix has turned hostile. There is no medical evidence of commission of alleged offence. The prosecutrix in her examination has disclosed her age 19 years and in the Ossification Test it was found 14-17 years. The petitioner is in custody since 19.07.2022 and he is a 23 years old boy. The petitioner is not involved in any other offence. The petitioner has been wrongly implicated in the commission of alleged offence.

4. Reply/Status report by way of affidavit dated 09.05.2023 of Sanjeev Kumar, H.P.S., Assistant Commissioner of Police, Sadar Gurugam, filed on behalf of respondent-State is taken on record. Registry is directed to tag the same at appropriate place.

5. Learned State Counsel submits that police report has already been filed and charges stand framed. She further submits that out of 16 witnesses, 3 have already been examined which includes the prosecutrix. Learned State counsel fairly concedes that prosecutrix has turned hostile and she had claimed her age 19 years and in the Ossification Test, age was found 14-17 years.

6. In the case in hand, the petitioner is in custody since 19.07.2022 and he is not involved in any other offence, as confirmed by learned State counsel. Police report under Section 173 of Cr.P.C. stands filed, charges stand framed. There is dispute of age of the prosecutrix and there is no medical evidence of commission of alleged offence. The prosecutrix has turned hostile. The Trial Court yet has to return definite findings on the disputed issues. There are 16 prosecution witnesses and till

date only 3 have been examined, thus, there is abysmally low possibility of conclusion of trial in near future. The prosecutrix stands examined, thus, there is no possibility of winning over or pressurizing her. 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.

7. 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/Illaqa/Duty Magistrate concerned.

8. 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

16.05.2023
Mohit Kumar

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