

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

201

CRM-M-25635-2023

Date of Decision: 25.05.2023

Parveen @ Pinnu

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Present: Mr. Saajan Singla, Advocate for the petitioner.

Mr. Vipul Sherwal, AAG, Haryana.

Ms. Praveen Dahiya, Advocate for the victim.

SANJEEV PRAKASH SHARMA, J (ORAL)

Prayer in the present petition filed under Section 439 Cr.P.C. is for grant of regular bail to the petitioner in FIR No.189 dated 28.03.2022 under Section 365 IPC (Sections 363, 366, 376 (2) (n) IPC were added during investigation and Section 365 IPC was dropped) and Section 6 of the POCSO Act, registered at Police Station Kharkhoda, District Sonipat.

Learned counsel for the petitioner submits that the victim was about 18 years of age and the petitioner has married the victim who has also stated in her statement made under Section 164 Cr.P.C. as well as before the Court about the said fact. He further submits that the allegations of rape have not been supported by the victim nor abduction charges have been supported. The statement of the alleged victim has already been recorded.

Learned counsel for the victim has also put in appearance and submits that she is a Muslim woman and she is living at the house of the petitioner as a wife. The provisions of POCSO Act would have no application in the circumstances as she was major.

Learned State counsel, on the other hand, has opposed the

present petition for grant of regular bail and has submitted that the age of the girl has been alleged to be 17 years by her parents and she therefore, could not have an independent consent and the marriage is therefore illegal. He has also relied upon a judgment passed by the Hon'ble Supreme Court in the case of *Independent Thought Vs. Union of India and another, AIR 2017 SC 4904*.

This Court has heard learned counsel for the parties and has perused the paper book.

If a girl leaves her parental home on her own will and represents herself to be of 18 years of age and marriage takes place between the parties, the question would arise whether the concerned accused can be said to have knowledge of the girl being less than 18 years of age. Till a person has knowledge of age of the alleged victim, to be less than 18 years, *prima facie* this Court finds that the charges of rape cannot be brought under the POCSO Act.

Without commenting on the merits of the case and keeping in view the above said facts and circumstances, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail/surety bonds of Rs.50,000/- to the satisfaction of the concerned trial Court/ Duty Magistrate.

Nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.

25.05.2023

D.Bansal

(SANJEEV PRAKASH SHARMA)
JUDGE