

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

222

CRM-M-38280-2023 (O&M)

Date of Decision : 29.11.2023

ASHISH KUMAR @ AMAN

.... Petitioner

VERSUS

STATE OF HARYANA

.... Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Satyendra Chauhan, Advocate for the petitioner.

Ms. Priyanka Sadar, AAG Haryana.

ALKA SARIN, J. (ORAL)

1. The present petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to the petitioner in FIR No.802 dated 31.12.2022 under Sections 363, 366-A of the Indian Penal Code, 1860 and Section 6 of Protection of Children from Sexual Offences Act, 2012 registered at Police Station Mujeser, District Faridabad.

2. The FIR in the present case was registered on the statement of the mother of the victim wherein it was stated that her daughter, who is her fifth daughter and studying in Class-V, is aged about 19 years. On 30.12.2022 at about 3:00 pm she left the home without informing anyone and till that date she has not returned home, hence, requested that an FIR be registered. The prosecutrix went missing on 30.12.2022 and she was recovered on 12.01.2023. Her statement under Section 164 CrPC was recorded in the presence of legal aid counsel as well as before the Area

Magistrate. She was medico legally examined. The prosecutrix was found to be pregnant and her pregnancy was aborted. Statement of the prosecutrix was recorded before the Child Welfare Committee, Faridabad. The accused/petitioner was arrested on 14.01.2023.

3. Learned counsel for the petitioner would contend that the victim in the present case was 19 years of age at the time of the alleged commission of the offence. Learned counsel, in support of his argument, has relied upon Annexure P-1 which is the complaint given by the mother of the victim. Learned counsel has also relied upon the aadhar card (Annexure P-3) which is appended with the petition which shows the date of birth of the victim as 01.06.2003. It is, hence, the argument of the learned counsel for the petitioner that the victim was a minor and offence under the Protection of Children from Sexual Offences Act, 2012 is not made out. Learned counsel would further contend that the parties had also solemnized their marriage as can be seen from the certificate of registration of marriage (Annexure P-4).

4. Learned counsel for the State has relied upon the status report wherein it has been stated that the medical examination of the prosecutrix was conducted and she was found to be pregnant. It is further stated that on 13.01.2023 the complainant produced the school leaving certificate of the prosecutrix as per which the date of birth of the prosecutrix is 01.06.2007. The said school leaving certificate was also verified by the Principal of the School. As per the status report, the school leaving certificate was found to be correct and hence offence under Section 6 of Protection of Children from Sexual Offences Act, 2012 was committed. The statement of the prosecutrix

under Section 164 CrPC was got recorded before the Child Welfare Committee, Faridabad and the Area Magistrate wherein she specifically stated that the petitioner had made physical relations with her. As noticed earlier, the prosecutrix was found to be pregnant.

5. Learned counsel for the State during the course of argument has stated that the DNA Report in the present case is awaited. However, learned counsel for the petitioner insisted that the matter be heard without waiting for the DNA Report. It has further been pointed out by the learned counsel for the State that the prosecutrix is yet to be examined in the present case.

6. Heard.

7. In the present case the argument of the learned counsel for the petitioner that the age of the prosecutrix was 19 years of age cannot be accepted at this stage in view of the status report filed by the State wherein it has been stated that the school leaving certificate has been produced wherein date of birth of the prosecutrix has been mentioned as 01.06.2007. The said school leaving certificate has also been verified by the Principal of the School.

8. The Hon'ble Supreme Court in ***Criminal Appeal No.1898 of 2023*** decided on 18.07.2023 titled as '***P. Yuvaprakash vs State Rep. by Inspector of Police***' [2023 Livelaw (SC) 538] has held as under :

“13. It is evident from conjoint reading of the above provisions that wherever the dispute with respect to the age of a person arises in the context of her or him being a victim under the POCSO Act, the courts have to take

recourse to the steps indicated in Section 94 of the JJ Act. The three documents in order of which the Juvenile Justice Act requires consideration is that the concerned Court has to determine the age by considering the following documents:

“(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;

(ii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board”.

14. Section 94 (2)(iii) of the JJ Act clearly indicates that the date of birth certificate from the school or matriculation or equivalent certificate by the concerned examination board has to be firstly preferred in the absence of which the birth certificate issued by the Corporation or Municipal Authority or Panchayat and it is only thereafter in the absence of these such documents the age is to be determined through “an ossification test”

or “any other latest medical age determination test” conducted on the orders of the concerned authority, i.e. Committee or Board or Court. In the present case, concededly, only a transfer certificate and not the date of birth certificate or matriculation or equivalent certificate was considered. Ex.C1, i.e., the school transfer certificate showed the date of birth of the victim as 11.07.1997. Significantly, the transfer certificate was produced not by the prosecution but instead by the court summoned witness, i.e., CW-1. The burden is always upon the prosecution to establish what it alleges; therefore, the prosecution could not have been fallen back upon a document which it had never relied upon. Furthermore, DW-3, the concerned Revenue Official (Deputy Tahsildar) had stated on oath that the records for the year 1997 in respect to the births and deaths were missing. Since it did not answer to the description of any class of documents mentioned in Section 94(2)(i) as it was a mere transfer certificate, Ex.C-1 could not have been relied upon to hold that M was below 18 years at the time of commission of the offence.”

9. As per the school leaving certificate, the date of birth of the prosecutrix is 01.06.2007. The prosecutrix at the time when she recovered was found to be pregnant. Keeping in view the nature of the allegations, I do

not find it to be a fit case for grant of regular bail to the petitioner and accordingly, the present petition is dismissed. Pending applications, if any, also stand disposed off.

29.11.2023*Aman Jain***(ALKA SARIN)****JUDGE**

*NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO*