

217 IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH

CRM-M-37702-2023 (O&M)
Date of Decision: 25.09.2023

SAHIL @ ILLU

...Petitioner

V/S

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Siddarth, Advocate,
Ms. Poonam Rauf, Advocate and
Mr. Suraj, Advocate for the petitioner.

Ms. Mayuri Lakhanpal Kalia, DAG Haryana.

HARPREET SINGH BRAR J. (Oral)

1. The petitioner is seeks regular bail under Section 439 of Cr.P.C. in the case bearing FIR No. 392 dated 16.06.2022 under Sections 376(3) of Indian Penal Code and Section 6 of POCSO Act registered at Police Station Gharaunda, Karnal.

2. Learned counsel for the petitioner inter alia contends that the victim has admittedly been recovered on 19.06.2022 from the Jewels Hotel, Bishan Sawroop Colony, Panipat and the prosecutrix has not given any specific date or the manner in which the alleged occurrence has taken place. It is her own case that she has accompanied the petitioner to various places including Mussoorie. Learned counsel further contends that even as per the date of birth certificate, the date of birth of the prosecutrix is 20.07.2004 and as such the prosecutrix would be more than 17 years and 11 months at the time of alleged occurrence and moreover,

the date of birth certificate relied upon by the prosecution does not bear the name of the prosecutrix. The prosecutrix was subjected to medico-legal examination on 20.06.2022 and nothing conspicuous has been found which would remotely suggest that the prosecutrix was subjected to any sexual assault. Two co-accused were found to be innocent by the Investigating Agency while submitting the challan under Section 173 of Cr.P.C.

3. Per contra, Learned State counsel opposes the grant of regular bail to the petitioner on the ground that prosecutrix has already been examined and she has duly supported her version given in the statement under Section 164 Cr.P.C. and the complicity of the petitioner is proved from the statement of the prosecutrix.

4. I have heard learned counsel for the parties.

5. The petitioner is behind the bars since 22.06.2022 and out of 17 prosecution witnesses, only 1 PW has been examined till date and FSL Report is also awaited. It will be a moot point to be determined by the learned trial Court as to whether the petitioner is able to rebut the presumption under Section 29 and 30 of POCSO Act during the course of trial. Therefore, keeping in view the custody undergone by the petitioner alone and without commenting any further on the merits of the case, lest it may prejudice the final outcome of the trial, the present petition is allowed and the petitioner is directed to be released on regular bail subject to his furnishing requisite bail bonds/surety bonds to the satisfaction of the concerned trial Court/Chief Judicial Magistrate/Duty Magistrate.

6. The petition is allowed.
7. Nothing expressed hereinabove would be construed to be an
expression of opinion on the merits of the case.

25.09.2023
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No