

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

**CRM-49663-2023 in/and
CRM-M-50018-2022
Decided on:-05.12.2023**

Kashmir Singh @ Sonu

....Petitioner..

vs.

State of Haryana and another

....Respondents.

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Lupil Gupta, Advocate for the petitioner.

Mr. Viney Phogat, DAG, Haryana.

Mr. Amit Singla, Advocate,
for respondent No.2.

HARKESH MANUJA J. (Oral)

CRM-49663-2023

Prayer in this application is for preponing the date of hearing of
the main case, which is fixed for 06.02.2024.

Notice of the application.

Mr. Viney Phogat, DAG, Haryana accepts notice on behalf of
the respondent-State, whereas, Mr. Amit Singla, Advocate accepts notice on
behalf of respondent No.2 and raise no objection to the application.

Having heard learned counsel for the parties and gone through
the contents of the application, the same is allowed and date of hearing of
the main case is preponed from 06.02.2024 to today itself i.e. 05.12.2023 for
hearing.

Main case

1. By way of present petition filed under Section 439 of the Code

of Criminal Procedure, 1973, prayer has been made for grant of regular bail pending trial, in case FIR No.213, dated 03.05.2022, registered under Sections 363, 366-A, 376(2)(n) IPC and under Section 6 of POCSO Act, 2012 at Police Station City Dabwali, District Sirsa.

2. In the present case, the petitioner has been implicated with the allegations of having kidnapped and raped the victim/survivor.

3. The prayer made herein has been opposed at the instance of learned State counsel while submitting that the victim/survivor in the present case happens to be a minor, who was kidnapped and raped by the petitioner and thus, he does not deserve the concession of bail.

4. On the other hand, learned counsel appearing on behalf of respondent No.2 submits that the complainant has no objection, in case, the petition is allowed.

5. I have heard learned counsel for the parties and gone through the paper book. I find substance in the submissions made on behalf of the petitioner.

6. In the present case, the petitioner is behind the bars for the last more than 1 year and 7 months and the investigation already stands concluded with the filing of challan, followed by framing of charges. Moreover, neither the complainant nor the victim/survivor while appearing before the Trial Court as PW-2 and PW-1, respectively even support the prosecution version. Relevant extract from the statement made by the victim/survivor while appearing as PW-1 before the Trial Court on 07.10.2023 is reproduced hereunder:-

“.....I have seen accused Kashmir @ Sonu, present in the court today. He is our relative. Accused neither kidnapped me nor

committed rape upon me at any point of time. I did not make any statement against him.

At this stage, the witness is declared hostile at the request of learned Public Prosecutor as she is concealing the truth from this Court and therefore, learned Public Prosecutor for State is allowed to cross-examine her). XXXX by Ms. Samistha, Public Prosecutor for State assisted by Ms. Amandeep Kaur Advocate for complainant.....”

7. Considering the statements made by victim/survivor as well as her mother and the custody period of the petitioner, I do not find any reason to extend his incarceration any further.

8. Without commenting anything on the merits of the case, lest it may prejudice the trial, the present petition is allowed and the petitioner is ordered to be released on regular bail on his furnishing adequate bail/surety bonds to the satisfaction of the concerned learned trial Court/Duty Magistrate.

9. It is made clear that this order may not be construed as expression of an opinion on the merits of the case.

05.12.2023
sonika

(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/ No