

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

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**CRM-M No. 59409 of 2022
Date of Decision : 20.4.2023**

*Vicky**..... Petitioner**versus**State of Haryana**..... Respondent***CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA**

Present: Mr. Balvinder Sangwan, Advocate, for the petitioner

Ms. Mahima Yashpal, DAG, Haryana

TRIBHUVAN DAHIYA J. (ORAL):

This is a petition under Section 439 Cr.P.C. seeking regular bail to the petitioner in case FIR No.798 dated 1.12.2021 under Section 363 IPC (Sections 366 and 328 IPC and Sections 4 and 17 of POCSO Act, 2012) registered at Police Station Sector 7, Ballabgarh.

2. The FIR was lodged on the complaint filed by the victim's father that her daughter, aged about thirteen years, was missing from home.

3. Learned counsel for the petitioner contends that the victim willingly accompanied the petitioner and stayed with him. He has referred to her testimony before the trial Court as PW-1 (Annexure P-3), wherein she admitted in the cross-examination that she left home on her own and did not tell her parents about it, or else they would have beaten her up. She wanted to go with the petitioner. The present case was registered on the asking of her parents. The petitioner had not committed any wrong act with her, and did not want him to be punished. She had consumed poison due to fear of her parents and brother, from whom she apprehends danger to life. She also stated that she wanted to marry the petitioner; and denied that she was born

in 2008. Further, learned counsel has referred to the testimony of the complainant as PW-2 and submit that no positive evidence with regard to the victim's date of birth of the victim could be brought on record by him. He stated that the date of birth in Aadhar card has been recorded on the basis of ration card. Despite the cross examination having been deferred, the ration card could not be produced by him, nor could he produce any certificate of age given to the school authorities at the time of her admission. Therefore, as per the evidence adduced, the alleged offences are not made out against the petitioner.

4. Learned State counsel, on instructions from ASI Jail Singh, opposes the grant of bail by submitting that the victim was minor. She was recovered from the petitioner's custody on 6.12.2021. Her statement under Section 164 Cr.P.C. was recorded wherein she alleged rape by the petitioner. Her medical examination was also conducted. There are thirty witnesses in all, out of which three have been examined, and the trial is now fixed for 11.7.2023. The petitioner is in custody since 8.12.2021, and there is no other case pending against him.

5. The submissions made by of learned counsel for the parties have been considered. The material prosecution witnesses, the victim herself and her parents have already been examined. The prosecution version has not been supported by the victim and her actual age is also debatable. In these circumstances, culpability of the petitioner is a matter of trial, which will take some time to conclude as twenty one prosecution witnesses still remain to be examined. The petitioner is in custody for about one and a half year and has no criminal antecedents. Therefore, no useful purpose will be served by confining him to custody any longer.

7. Accordingly, the petition is allowed. The petitioner is ordered to be released on bail to the satisfaction of the trial Court/Duty Magistrate concerned.

(TRIBHUVAN DAHIYA)
JUDGE

20.4.2023
Ashwani

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