

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

**CRM-M-1815-2023
Date of Decision: 18.01.2023**

RISHAV GULALIA

... PETITIONER

V/S

STATE OF PUNJAB

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present: Mr. Jagjeet Singh, Advocate for the petitioner.

Mr. Sandeep Kumar, DAG Punjab.

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VIVEK PURI, J. (ORAL)

The petitioner is seeking regular bail in case bearing FIR No. 6 dated 16.01.2022 under Sections 363, 366-A IPC (offence under Sections 376, 120-B IPC and Section 4 of Protection of Children from Sexual Offences Act added later on), registered at Police Station Division No.1, Pathankot, District Pathankot.

Custody certificate has been taken on record.

Briefly, the FIR has been registered on the basis of the statement of the father of the victim alleging that the victim is aged about 17 years and 11 months and she went missing from the house on 15.01.2022.

Learned counsel for the petitioner contends that in her statement recorded under Section 164 Cr.P.C., the victim has not levelled any allegations with regard to commission of penetrative sexual assault. Although, during the course of trial, the victim in her examination-in-chief

has levelled allegations of commission of rape but during her cross-examination, she has given a discrepant and contradictory version. Even no semen has been detected at the time of medical examination of the victim. A compromise, Annexure P-10 has also been effected wherein the father of the petitioner and father the complainant have agreed to solemnize the marriage of the victim with the petitioner. The victim has since attained the age of majority. The petitioner is in custody for a period of 11 months and 23 days and not involved in any other case. So far only 2 out of 20 witnesses have been recorded.

Learned State counsel has opposed the bail application on the score that the victim was less than 18 years of age at the time of occurrence and furthermore, no semen has been detected in the chemical examination as the allegations of physical contact pertain to the period of 15 days prior to her medical examination.

In the instant case, the victim has not attributed allegations of penetrative sexual assault in the statement under Section 164 Cr.P.C. Furthermore, a discrepant and contradictory version has been given by the victim in her statement recorded in the trial Court. A compromise has also been effected between the parents of the victim and the petitioner and have agreed to solemnize their marriage. The petitioner is in custody for a period of about one year and so far, only 2 out of 20 witnesses have been recorded. The conclusion of trial is likely to take some more time and no fruitful purpose would be served by detaining the petitioner in further custody.

As such, sufficient mitigating circumstances are made out to extend the concession of bail to the petitioner. Therefore, without commenting on the merits of the case and the legality and validity of the compromise, it is ordered that the petitioner be released on regular bail subject to his furnishing fresh bail bonds/surety bonds to the satisfaction of the concerned trial Court/Chief Judicial Magistrate/Duty Magistrate.

The petition is allowed.

18.01.2023

Janki

**(VIVEK PURI)
JUDGE***Whether speaking/reasoned : Yes/No**Whether reportable : Yes/No*