

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

104+221

CRM No.16803 of 2024 in/and
CRM-M No.4637 of 2024
Date of Decision: 22.04.2024

Vikas Chander ... Petitioner

Versus

State of Haryana ... Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Harsh Rana, Advocate,
for the applicant-petitioner.

Mr. Neeraj Poswal, AAG, Haryana
for the respondent-State.

MANISHA BATRA, J.(Oral)

CRM No.16803 of 2024

Learned counsel for the applicant-petitioner seeks withdrawal of the present application. Accordingly, the same stands dismissed as withdrawn.

Main Case

1. The present petition has been filed under Section 439 of Cr.P.C. seeking regular bail in FIR mentioned below:-

FIR No.	Police Station	Sections
316	Manesar, District Gurugram	363 and 366-A of IPC

2. Brief facts of the case relevant for the purpose of disposal of the present petition are that the aforementioned FIR was registered on 24.11.2021 on the basis of a written complaint submitted by the complainant "S" (name withheld) alleging therein that on 01.10.2021, the

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prosecutrix (name withheld) who was her 16-17 years old daughter had gone to the house of her maternal aunt at Village Naharpur, District Gurugram. She had started living in the house of one “S” in the same village instead of living at the house of her aunt. She alleged that on 11.10.2021, the prosecutrix had left the place wherein she was living with “S” without informing anyone and “S” informed about this fact to them. They raised suspicion that her daughter had been enticed away by the petitioner who belonged to her village. Initially, a case under Sections 363 and 366-A of IPC was registered. Investigation proceedings were initiated. The prosecutrix was recovered on 07.09.2022 from District Nasik (Maharashtra). Her statement under Section 161 of Cr.P.C. was recorded on 09.09.2022. In her statement recorded under Section 164 of Cr.P.C. before the Magistrate, she disclosed that she was 21 years old and had gone with the petitioner out of her own will and wanted to live with him. She refused for getting her medical examination conducted. However, her general medical examination was conducted and she was found to be pregnant. Offence under Section 6 of Protection of Children from Sexual Offences Act, 2012 (For short “POCSO Act”) was added. The petitioner was arrested on 10.09.2022. The school record of the victim was produced which showed her to be minor as on the date of occurrence. During investigation, offence under Section 366-A of IPC was deleted and Section 366 of IPC was added. After completion of usual formalities of investigation, challan was presented in the Court and presently, the petitioner is facing trial for commission of offences punishable under Sections 363 and 366 of IPC and Section 6 of POCSO Act. He had moved an application for grant of regular bail before learned trial

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Court which was dismissed vide order dated 16.11.2023.

3. The present petition has been filed by the petitioner on the grounds and it is argued by his counsel that he has been falsely implicated in this case. The prosecutrix was major. Both of them were in love with each other and she had voluntarily gone with him. They had performed marriage. A child was also born out of their wedlock. The prosecutrix had not supported the prosecutrix version before learned trial Court. The statements of her parents have also been recorded which show that they were not aware about the exact age of the prosecutrix and got recorded her date of birth as 16.07.2005 only on the basis of presumption. The statement of PW-5 who was Head Master of the school wherein the prosecutrix studies also shows that the date of birth of the prosecutrix was recorded as 16.07.2005 on the basis of only oral information given by her parents who had denied any knowledge about any age of the prosecutrix. The testimony of PW-5 proved that the date of birth of the prosecutrix was recorded on the basis of oral information given by her parents and whereas her parents themselves admitted that they were not knowing the exact date of birth of the prosecutrix. The prosecutrix was not proved to be minor and as she had voluntarily and willingly gone with the petitioner and even got married with him and she being an adult, no offence whatsoever could be stated to have been committed by the petitioner.

4. Learned counsel for the petitioner has further argued that unfortunately the prosecutrix as well as child born to her have died an accidental death on 05.04.2024 when they were returning home after attending this Court. The mother of the petitioner had also died in the same

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accident and an FIR No.77 dated 05.04.2024 has also been lodged at Police Station Samrala, District Khanna, Punjab in this regard. It is also argued that the release of the petitioner on bail is also required for the purpose of performing the last rites of the prosecutrix, his child as well as his mother. With these broad submissions, it is argued that the petitioner deserves to be given concession of bail.

5. Status report has been filed by the respondent-State as per which, the prosecutrix was found to be a minor as per the school record though she had not supported the version of the prosecution but the testimony of her father and mother as recorded before the Court showed that she was minor at the time of occurrence. As per the report received from FSL, Madhuban the male DNA profile generated from the blood of the male child born to the prosecutrix, he was biological offspring of the petitioner and the prosecutrix. It is submitted that the no document regarding marriage of the petitioner with the prosecutrix has come on record. The trial is going on at a proper pace. The allegations against the petitioner are serious in nature. Therefore, it is argued that the petition does not deserve to be allowed. However, the fact that the prosecutrix and her male child as well as mother of the petitioner have expired in a road side accident on 05.04.2024 has been affirmed.

6. I have heard learned counsel for the petitioner and learned State counsel at considerable length and have gone through the material placed on record.

7. Though at this stage, it is not feasible for this Court to record any definite finding as to the fact that the prosecutrix was a minor at the time

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of occurrence, however, the fact that the prosecutrix, her parents as well as Head Master of the school wherein the prosecutrix studied have already been examined before the learned trial Court and the copies of their statements have been placed on record, in my considered opinion, the same can certainly be looked into. On a perusal of testimony of PW-5 (Annexure P-7) it is revealed that though he stated that as per the school record, date of birth of the prosecutrix was 16.07.2005 but it was also admitted by him that the date of birth of the prosecutrix was recorded on the basis of oral information given by her parents and not on the basis of any birth certificate issued by any competent Government authority or even Aadhar Card of the prosecutrix. The parents of the prosecutrix have also deposed that they are illiterate persons and not having any knowledge as to exact date of birth of the prosecutrix. Her mother is even shown to have stated that she did not know as to who got the prosecutrix admitted in the school. Meaning thereby, the entries in the record of the school as to date of birth of the prosecutrix cannot be considered to be authentic one. The prosecutrix who has unfortunately died recently, in her sworn deposition herself admitted that she was 20 years old at the time she had performed marriage with the petitioner on 24.07.2021 and had voluntarily gone with him. She also admitted that the child born to her was out of the loins of the petitioner and that the physical relations were developed between them after their marriage and neither she was enticed away by the petitioner nor rape was committed upon her. Taking into consideration the nature of the evidence that has come on record, the fact that it is debatable as to whether the prosecutrix was minor at the time of occurrence and the attendant overall facts and circumstances, I am of the

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opinion that the petitioner deserves to be released on bail at this stage.
Hence, the petition is allowed and the petitioner is ordered to be admitted to
bail subject to his furnishing personal as well as surety bonds to the
satisfaction of learned trial Court.

8. It is clarified that observations made hereinabove shall not be
construed as an expression of opinion on the merits of the case.

22.04.2024
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(MANISHA BATRA)
JUDGE

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