



Sr. No.231

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

CRM-M-7502-2024
Date of decision: 20th May, 2024

UMESH**Petitioner**

versus

STATE OF HARYANA**Respondent**

CORAM: HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

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

Mr. Kirpal Singh Thakur, AAG, Haryana.

Mr. Kartik Yadav, Advocate
for the complainant.

HARPREET KAUR JEEWAN, J. (ORAL)

1. The present petition has been filed under Section 439 of the Code of Criminal Procedure, 1973, for grant of regular bail to the petitioner in case bearing FIR No.457 dated 01.12.2023, under Sections 363, 366-A, IPC, 1860 (Section 363, 366-A IPC deleted later on and Section 365 IPC and Section 6 of Protection of Children from Sexual Offences Act, 2012, added later on), registered at Police Station Old Faridabad (Annexure P-1).
2. As per the prosecution case, on 01.12.2023, the complainant reported the matter to the Police that on 30.11.2023, his sister “S” has been enticed away by the petitioner. The FIR was registered and during investigation, Section 365 IPC was added. The prosecutrix was recovered on 20.12.2023 and Section 6 Protection of Children from Sexual Offences Act, 2012 was added. The statement of the prosecutrix was recorded under Section 164 Cr.P.C. The petitioner is in custody since 21.12.2023.



3. Learned counsel for the petitioner *inter alia* contends that the petitioner has been falsely implicated in this case. The FIR was registered at the instance of the brother of the prosecutrix. Even in the statement of the prosecutrix recorded under Section 164 Cr.P.C. (Annexure R-1), there is no incriminating evidence against the petitioner.

4. Learned State counsel has confirmed that investigation is complete and final report/challan under Section 173 Cr.P.C. has been presented before the trial Court. Custody certificate of the petitioner dated 18.05.2024 has also been filed by the learned State counsel, as per which, the petitioner is in custody for the last 04 months and 28 days.

5. Learned counsel for the complainant has not opposed the present petition and submitted that the FIR was registered at the spur of the moment.

6. I have considered the aforesaid contentions and perused the paper book.

7. The statement of the prosecutrix recorded under Section 164 Cr.P.C. (Annexure R-1) is reproduced as under:-

“xxx xxx xxx xxx

Nobody did anything. One day, date 25th, brother had scolded. I went to my sister. Went to Aligarh. Had gone alone. I knew the way as I had gone several times. I went by bus. I had money with me. I had not gone at instructions of any person. Police has arrested Umesh. I used to talk with him. He did not ask me to go. He did not know that I was going. I told him later on. I had called Umesh from the Mobile Phone of my sister. I stated that my family members were scolding me. I stated that I do not want to reside in my house and want to reside with him. He refused and stated that the age was less and therefore could not go. I persuaded and he came to take me at Ballabgarh, he persuaded me to go to house but I did not go. There was a hotel, do not remember the name. There stayed for 8 days. After coming from the house of my sister, he also stayed. I did not agree to



his advice to going to the house. I was adamant I do not want to go to my house. I love this boy and I am to go with him.

xxx xxx xxx xxx”

8. Though the ossification test was done to ascertain the age of the prosecutrix, however, there is no medical examination regarding sexual assault to the prosecutrix. Even as per the affidavit of the prosecutrix (Annexure P-4) and affidavit of the complainant (Annexure P-5), no statement has been given regarding any wrong act having been committed by the petitioner with the prosecutrix.
9. Learned counsel for the complainant confirms about the execution of aforesaid affidavits.
10. In view of the facts and circumstances of the case, the present petition is allowed. The petitioner is ordered to be released on regular bail, subject to his furnishing adequate bail bonds and surety bonds to the satisfaction of the trial Court/Duty Magistrate concerned.
11. However, it is made clear that nothing expressed hereinabove would be construed to be an expression of opinion on merits of the case.
12. Pending miscellaneous application(s), if any, shall stand disposed of.

(HARPREET KAUR JEEWAN)
JUDGE

20th May, 2024
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Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No