

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

215

CRM-M-8084-2024

Date of Decision: 20.02.2024

Deepak

.... Petitioner

Versus

State of Haryana

.... Respondent

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: - Ms. Samridhi Sareen, Advocate for the petitioner.

Mr. Surinder Kumar Dagar, DAG, Haryana.

NIDHI GUPTA, J. (ORAL)

The petitioner has filed the present 1st petition under Section 439 of the Code of Criminal Procedure, 1973, for grant of regular bail in case FIR No. 254 dated 11.05.2022 (Annexure P-1) registered under Sections 363, 366-A, 376(2)(n) and 376(3) IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (for short-‘the POCSO Act’) at Narnaund Police Station, Hansi.

The aforesaid FIR was registered on the basis of statement of the mother of the victim, which is reproduced as under:-

“....That it is submitted that I Seema wife of Ramesh Kumar Caste xxxx is the resident of Village Gamda, Tehsil Narnaund, District Hisar. That on 10/05/2022, we slept after having dinner at our home and at around 01:00 AM in the midnight, I woke up and saw that my daughter (victim) was not in her bed. I tried to find her in neighbour but failed to find her. We contacted all our relatives but failed to find her. The description of my daughter is: aged around 16 years, Fair Complexion, Round face, wearing pink clothes. We have doubt that Deepak son of Rakesh caste Dhum resident

of village Jatai, District Bhiwani have manipulated our daughter and she had gone with him. The above-said person deepak used to come in our village Gamda at her Aunt's (Bua's) house Nanhi wife of Rajkumar. We had a word with the above-mentioned boy earlier also but he was tutoring our daughter and used to talk to victim. Deepak is also missing from night of 10/05/2022 and his contact number 98128-60168 is also switched off. Therefore, it is humbly submitted that report may be registered against the above-mentioned person and it is also prayed that kindly find my daughter. I will be highly obliged.... "

Learned counsel for the petitioner, *inter alia*, submits that the petitioner and the victim were in a consensual relationship. It is submitted that the victim was 16½ years old at the time of alleged incident. It is further submitted that the victim in her statement dated 14.05.2022 (Annexure P-3) recorded under Section 164 Cr.P.C. by the learned Sub Divisional Judicial Magistrate, Hansi, had admitted that she was in a consensual relationship with the petitioner. Learned counsel further submits that even the FSL report is inconclusive. The petitioner has been in custody since 11.05.2022. The trial is likely to take long time. No useful purpose will be served by further detention of the petitioner in custody. Thus, it is prayed that petitioner may be released on regular bail.

Learned counsel for the State has filed custody certificate dated 19.02.2024, which is taken on record, as per which the petitioner has been in custody as an undertrial for a period of 01 year, 09 months and 05 days. As per custody certificate, there is no other case against the petitioner. It is submitted by learned counsel for the State that the date of birth of the victim is 20.12.2006 and she had been missing since 10.05.2022, therefore, it is clear that at the time of alleged incident, the victim was 15 years and 05 months of age. He further submits that under the POCSO Act, any alleged consent of victim is immaterial. Learned

counsel for the State submits that out of total 14 prosecution witnesses, 07 have been examined so far.

At this stage, reference may be made to the judgment of Karala High Court in **Anoop vs. State of Kerala and others 2022 SCC Online Ker 2982** wherein in para 40 it has been held as follows :-

“40. Therefore, on a profound consideration of the ground realities, the definition of ‘Child’ under Section 2(d) of the POCSO Act can be redefined as 16 instead of 18. Any consensual sex after the age of 16 or bodily contact or allied acts can be excluded from the rigorous provisions of the POCSO Act and such sexual assault, if it is so defined can be tried under more liberal provision, which can be introduced in the Act itself and in order to distinguish the cases of teen age relationship after 16 years, from the cases of sexual assault on children below 16 years. The Act can be amended to the effect that the age of the offender ought not to be more than five years or so than the consensual victim girl of 16 years or more. So that the impressionable age of the victim girl cannot be taken advantage of by a person who is much older and crossed the age of presumable infatuation or innocence.”

This Court upon consideration of the complete facts and circumstances of the present case, is in consonance with the abovesaid view taken by the High Court of Kerala.

Thus, having heard learned counsel for the parties, but without commenting on merits of the case, however, keeping in view the totality of the facts and circumstances of the case including the fact that the petitioner is only 20 years of age; and that the custody certificate

shows that there is no other case against the petitioner; and that the material witnesses including the victim and complainant stand examined; and also the fact that conclusion of trial will take considerable time, therefore, no useful purpose would be served by further detention of the petitioner. Thus, the present petition is **allowed**.

The petitioner-Deepak S/o Rakesh, is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Chief Judicial Magistrate/Duty Magistrate, concerned.

However, it is made clear that nothing stated above shall be construed as an expression of opinion on the merits of the case.

20.02.2024

rishu

(NIDHI GUPTA)

JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No