



taking into consideration the material facts of this case. It is contended that initially the FIR was registered on 07.04.2022 at the instance of the mother of the prosecutrix, who alleged having suspicion that her daughter has been kidnapped by someone. However, the victim refused to go with her relatives when she was recovered and she was sent to One Stop Centre, Hisar. On 28.04.2022 after 21 days, the complainant moved a complaint improving her version and alleged that the date of birth of the victim is 06.09.2006. On the basis of the said improved version, the offence under Sections 363, 366-A, 376(2) (n), 344 and 506 of the IPC, Section 6 of the POCSO Act and Section 3 of the Act of 1989 were added.

2.1 Learned counsel for the appellant further contends that appellant was having a live-in relationship with the victim and victim herself wanted to elope and reside with the appellant. The victim had shown her age to be 23 years and produced a copy of the Aadhar card and also executed a deed, dated 16.04.2022 (Annexure A-2). During her statement recorded by the trial Court, the victim has disclosed her age as 01.02.1999. The trial Court has lost sight of the fact that the DNA report is pending and the FSL report reflecting that human semen is detected is inconclusive.

3. Learned counsel for the State has opposed the present petition while referring to the documents, i.e. the statement recorded under Section 164 Cr.P.C. (Annexure R-1), a copy of the Medico-Legal Report (Annexure R-2), copy of the disclosure statement of the appellant/accused (Annexure R-3) and a copy of the RFSL report (Annexure R-4) and copy of the DNA report (Annexure R-4/A).



4. As per the office report, notice issued to respondent No. 2 has been received back served but no one has put an appearance on her behalf.
5. I have considered the aforesaid facts and circumstances.
6. The FIR was registered on 07.04.2022, whereby it was reported that the victim is missing and that she was alleged to have been kidnapped by someone. The prosecutrix was recovered after 20 days on 27.04.2022 and as per her statement recorded on 28.04.2022 under Section 164 Cr.P.C. (Annexure R-1), she disclosed her age as 16 years and also levelled allegations against the appellant regarding forgery of the Aadhar Card of the victim and having repeatedly committed rape upon her. The relevant portion of the statement annexed as Annexure R-1 reads as under:-

XXXX XXXX XXXX XXXX XXXX

“Q. What happened?

Ans. Amarnath meet me in Model Town and he used to follow me. I don’t like him. He used to ask me for sex. I have told this to my mother on which my mother slapped him and also threatened him. I don’t see him thereafter for 1-1½ year. One day he came and stated me to sit down on his bike. He taken me at Village Genj at this sister’s house and thereafter, he taken me at Panipat and prepared my Aadhar card and get my signature under pressure. Thereafter, he taken me back to Village Genj and taken a room on rent where he committed wrong act with me repeatedly. That police arrive at sister’s house and called us there. My parents were also came along with the police.”

7. As per the report of the Regional Forensic Science Laboratory, Hisar,(Annexure R-4), human semen was detected in the contents of the vaginal swab of the victim. As per the Forensic Science Laboratory,



Madhuban, Karnal (Annexure R-4/A), the DNA fingerprinting test was done and as per the conclusions, the DNA profiling of the swabs of the victim and underwear matched with the male DNA profile generated from the blood of the appellant.

8. Learned State counsel has also informed that the date of birth of the prosecutrix is recorded as 03.09.2006 in a school leaving certificate. A copy of the said certificate has been supplied in Court today. The same is taken on record.

9. Learned State counsel has further informed that the statement of the prosecutrix has been recorded by the trial Court, wherein she has supported the prosecution case. There is apprehension of tampering with the prosecutrix evidence as the statement of the parents of the victim are yet to be recorded. Learned State counsel has further informed that, during the investigation, the Aadhar card alleged by the appellant is found fake as the investigating agency has recovered two Aadhar cards of the victim each with a different date of birth.

10. The statement of the victim has been recorded during the trial and her deposition is annexed as Annexure A-4. In her examination-in-chief, the victim has alleged that she was in a relationship with the accused and while cross-examination she has stated that she was pregnant for 15-20 days. However, she suffered a miscarriage and the police later on, recovered the fetus upon questioning her family. She has admitted her statement having been recorded under Section 164 Cr.P.C.



10. The age of the prosecutrix shall be determined by the trial Court during the inquiry and the trial. At this stage, the school records primarily indicate that the prosecutrix is minor.
11. Keeping in view the medical evidence against the appellant and the DNA examination report coupled with the fact that the victim is *prime facie* 16 years of age, no ground for bail is made out.
12. In such circumstances, the impugned order dated 29.01.2024 passed by the learned Additional Sessions Judge-cum-Special Judge, Fast Track Court, Hisar, does not suffer from any illegality or impropriety.
13. Consequently, the present appeal has no merits and is accordingly dismissed.
14. It is made clear that nothing observed hereinabove will be taken to be an observation on the actual merits of the case, which would be taken up by the learned trial Court wholly on the basis of evidence led/gathered before it.
15. Pending miscellaneous application(s), if any, shall also stand disposed of.

July 18, 2024
nitin

Whether Speaking
Whether reportable

Yes
No

(HARPREET KAUR JEEWAN)
JUDGE