

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

**213**

CRM-M-12821-2024

Date of Decision: 18.03.2024

Biku Singh

.... Petitioner

Versus

State of Haryana and others

.... Respondents

**CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present: - Mr. Jainainder Saini, Advocate for the petitioner.

Mr. Surinder Kumar Dagar, DAG, Haryana.

Mr. Mohit Punia, Advocate for respondents No. 2 and 3

**NIDHI GUPTA, J. (ORAL)**

The petitioner has filed the present 1<sup>st</sup> petition under Section 439 of the Code of Criminal Procedure, 1973, for grant of regular bail in case FIR No. 499 dated 14.08.2023 registered under Sections 363 and 366 IPC and (Sections 366-A, 376(3), 420, 467, 468, 471 IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012, added lateron) at Police Station Bhiwani Sadar, District Bhiwani.

The aforesaid FIR was registered on the basis of application/complaint moved by the father of the victim/complainant /respondent No. 2 herein, which is reproduced as under:-

*“.....Sir, I xxxx son of Sh. Raghubir Caste Khati, am resident of Pana, Sawai Kalinga. My wife has passed away. Sir I have three daughters, name of my elder girl is xxx who lives in Kalinga village with my old mother and two younger girls are residing with my sisters. I have gone to Delhi for about 15 days to work as a mason, today on 14.08.2023*

*when I came to my house, I came to know that elder daughter xxxx has been seduced by some unknown boy from tonight onwards. Date of birth of my daughter is 10.09.2007, fair complexion, height 5'4", who is wearing a silver coloured frock. The photocopy of my daughter's birth certificate is given to you. I request you to take legal action against the unknown boy who lured my daughter away and my daughter be got recovered....."*

Learned counsel for the petitioner, *inter alia*, submits that age of the victim at the relevant time was 16½ years. It is submitted that the petitioner and the victim have solemnized marriage on 14.08.2023. Learned counsel refers to the statement of the victim dated 24.08.2024 (Annexure P-5) recorded under Section 164 Cr.P.C., wherein she has categorically stated that she went with the petitioner to Jaipur on 14.08.2023 and conducted marriage with him, with her own free will; and she does not wish to go back with the complainant/respondent No. 2 herein. It is submitted that thereafter, the matter has been compromised even with the complainant vide compromise 02.02.2024 (Annexure P-3). The petitioner has been in custody since 24.08.2023. 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.

Pursuant to the advance notice, learned counsel for the State has filed custody certificate dated 15.03.2024, which is taken on record, as per which the petitioner has been in custody as an undertrial for a period of 06 months and 21 days. As per custody certificate, there is no other case against the petitioner.

Mr. Mohit Punia, Advocate, has put in appearance on behalf of respondents No. 2 and 3 and submits his Vakalatnama, which is taken

on record. Learned counsel for respondents No. 2 and 3 admits that factum of compromise between the parties and has not disputed the aforesaid submissions made by learned counsel for the petitioner.

On the other hand, learned counsel for the State vehemently opposing the prayer for grant of bail to the petitioner submits that at the time of alleged incident, the victim was 16½ years old and under the provisions of POCSO Act, any alleged consent of victim is immaterial. On instructions, learned counsel further submits that the complainant and the victim/respondents No. 2 and 3, herein have been examined by the trial Court and both of them have turned hostile.

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.

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 custody period undergone by the petitioner and perusal of the custody certificate reveals that there is no other case against the petitioner; and the fact that the matter stands compromised between the parties and that the material witnesses i.e. the complainant and victim already stand examined and have turned hostile; 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-Biku Singh S/o Om Parkash 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.

**18.03.2024**  
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**( NIDHI GUPTA )**  
**JUDGE**

|                                  |               |
|----------------------------------|---------------|
| <b>Whether speaking/reasoned</b> | <b>Yes/No</b> |
| <b>Whether Reportable</b>        | <b>Yes/No</b> |