

CRM-M-18315-2024 (O&M)

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2024:PHHC:053495

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CRM-M-18315-2024 (O&M)

Date of Decision: 22.04.2024

Rajesh

.... Petitioner

Versus

State of Haryana

.... Respondent

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: - Mr. Ashit Malik, Advocate for the petitioner.

Mr. Surinder Kumar Dagar, DAG, Haryana.

Mr. Gautam Kaile, Advocate for the parents of the victim.

NIDHI GUPTA, J. (ORAL)

CRM-16084-2024

Application is allowed, as prayed for.

CRM-M-18315-2024

Vakalatnama filed by learned counsel for the parents of the
victim is taken on record.

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. 44 dated 16.01.2024 registered under Section 6 of the
Protection of Children from Sexual Offences Act, 2012 and Section 9 of

the Prohibition of Child Marriage Act, 2006 at Police Station City Karnal, District Karnal.

The aforesaid FIR was registered on the basis of complaint moved by the Chairman, Child Welfare Committee, Karnal which is reproduced as under:-

“For taking legal action against accused regarding GCS. Vide order dated 2.1.2024 passed by the Ld. District and Sessions Judge, Karnal, GCS daughter of Jaswant, resident of Madanpur was sent to temporary shelter. The committee provided temporary shelter to the child at M.D.D. Bal Bhawan, Phoosgarh, Karnal. After sending the child to Child Care Home, it is necessary to get done her medical examination. After medical examination it came to know that the child is two months pregnant. Thus, it is directed that legal action be taken in this regard.....”

Learned counsel for the petitioner, *inter alia*, submits that the date of birth of the victim is 21.02.2005, as is borne out from the matriculation certificate of the victim dated 11.06.2021 (Annexure P-1). It is stated that the petitioner and victim were in a consensual relationship and have performed marriage, as is evident from the marriage certificate dated 12.09.2023 (Annexure P-1A). As parents of the victim were against their relationship, the petitioner and victim had filed a petition for protection of their life and liberty before the learned Additional Sessions Judge, Karnal, which was allowed vide order dated 26.12.2023 (Annexure P-2). It is submitted that thereafter, the parents of the victim have produced the birth certificate of the victim issued on 29.12.2023 (Annexure P-3), as per which the date of birth of the victim is incorrectly shown to be 21.02.2006. Consequently, the matter was sent by the learned Sessions Judge, Karnal to the Child Welfare Committee, Karnal.

Thereafter, the victim was kept at Bal Bhawan, Karnal and was released on 11.01.2024, whereupon she suffered a statement before the PPO, Karnal, that she did not wish to go with her parents. Statement of the victim under Section 164 Cr.P.C., was also recorded on 23.01.2024, wherein she has reiterated that she had solemnized marriage with the present petitioner and did not wish to go back to her parents. The petitioner has been in custody since 05.02.2024. The trial is likely to take long time. No useful purpose would be served by further detention of the petitioner in custody. Thus, it is prayed that petitioner be released on regular bail.

On instructions from SI Sumit, learned counsel for the State informs that presently, the victim is residing with her sister-in-law/*nanad*/ sister of the present petitioner. He further informed that victim is now 05 months pregnant. Custody certificate of the petitioner is stated to be not available, however, on instructions, learned State counsel submits that petitioner has been in custody since 05.02.2024 and is not involved in any other case.

On the other hand, learned counsel appearing on behalf of parents of the victim vehemently opposes the prayer for grant of regular bail to the petitioner and submits that on the date of commission of offence, the victim was minor.

At this stage, reference may be made to the judgment of the Hon'ble Supreme Court in *P. Yuvaprakash vs. State rep. by Inspector of Police, Law Finder Doc ID # 2268796*, wherein in para Nos. 13 and 14 it has been held as follows:-

“13. It is evident from conjoint reading of the above provisions that wherever the dispute with respect to the age of a person arises in the context of her or him being a victim under the POCSO Act, the courts have to take recourse to the steps indicated in Section 94 of the JJ Act. The three documents in order of which the Juvenile Justice Act requires consideration is that the concerned court has to determine the age by considering the following documents:

*"(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;
(ii) the birth certificate given by a corporation or a municipal authority or a panchayat;
(iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board".*

14. Section 94(2)(iii) of the JJ Act clearly indicates that the date of birth certificate from the school or matriculation or equivalent certificate by the concerned examination board has to be firstly preferred in the absence of which the birth certificate issued by the Corporation or Municipal Authority or Panchayat and it is only thereafter in the absence of these such documents the age is to be determined through "an ossification test" or "any other latest medical age determination test" conducted on the orders of the concerned authority, i.e. Committee or Board or Court. In the present case, concededly, only a transfer certificate and not the date of birth certificate or matriculation or equivalent certificate was considered. Ex. C1, i.e., the school transfer certificate showed the date of birth of the victim as 11.07.1997. Significantly, the transfer certificate was produced not by the prosecution but instead by the court summoned witness, i.e., CW-1. The burden is always upon the prosecution to establish what it alleges; therefore, the prosecution could not have been fallen back upon a document which it had never relied upon. Furthermore, DW-3, the concerned Revenue Official (Deputy Tahsildar) had stated on oath that the records for the year 1997 in respect to the births and deaths were missing. Since it did not answer to the description of any class of documents mentioned in Section 94(2)(i) as it was a mere transfer certificate, Ex C-1 could not have been relied upon to hold that M was below 18 years at the time of commission of the offence.”

(emphasis supplied)

From the above, it is clear that date of birth as borne on the

Matriculation Certificate of the victim has to be given precedence over any birth certificate.

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 has been in custody since 05.02.2024 and is not involved in any other case; and also the fact that conclusion of trial will take considerable time, and no useful purpose would be served by further detention of the petitioner. The present petition is **allowed**.

The petitioner-Rajesh S/o Dharambir 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.

22.04.2024

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(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No