



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

205

CRM-M-22198-2024

Date of Decision: 08.05.2024

Sachin

.... Petitioner

Versus

State of Haryana and another

.... Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: - Mr. Sukesh Kumar Jindal, Advocate for the petitioner.

Mr. Surinder Kumar Dagar, DAG, Haryana.

Ms. Sonia Bohat, Advocate
for respondent No. 2-complainant and the victim.

NIDHI GUPTA, J. (ORAL)

Vakalatnama filed on behalf of respondent No. 2-complainant and 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. 40 dated 09.02.2024 (Annexure P-3) registered under Sections 363 and 366 IPC (during investigation Section 452 IPC was added) at Police Station Model Town, Panipat.

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

“It is stated that I, Neetu Devi wife of Durgesh Srivastava, am a resident of Gali No. 1, Azad Nagar, Panipat. I have got



one son and two daughters. The name of my son is Anurag. Younger to him is daughter daughter Priyanka and the youngest daughter's name is xxxx who is aged about sixteen and half years. My daughter xxxx has been taken away by Sachin son of Ashok Rai, resident of Raj Nagar, Panipat, with an intention to marry her. The physiognomy of my daughter is: Colour wheatish, round face, strong body, wearing red colour T-shirt and blue jeans. Legal action may be taken against Sachin and my daughter may be got recovered."

Learned counsel for the petitioner, *inter alia*, submits that the victim in her statement recorded under Section 164 Cr.P.C. dated 11.02.2024 (Annexure P-4), has categorically stated that she had gone with the petitioner of her own free will and accord. The victim has further stated as follows:-

"I know Sachin son of Ashok, aged 20 years, for the last two years. We are in love with each other and we were in a relationship. Our family members got to know about us last year. My family members had also made a police complaint against Sachin..... No body has done any wrong act with me. Now, I will not go back with my family members."

Learned counsel of the petitioner submits that from the above statement of the victim, it is clear that the victim had gone with the petitioner of her own free will and accord, therefore, offence under Section 366 IPC is not attracted. Moreover, offence under Section 366 IPC is a bailable offence; even offences under Sections 363 and 452 IPC are not made out against the petitioner.

Learned counsel for the petitioner also refers to the Counsellor's report reproduced in para No. 14 at page 9 of the paper-book, wherein it has been recorded by the Counsellor that '*...during the Session, her behaviour was normal. Her psychological state was normal....*' Further, it is submitted that admittedly, at the time of alleged



occurrence the victim was 16½ years old, but it is evident from the facts of the present case that the victim and the petitioner were in a consensual relationship. The petitioner has been in custody since 12.02.2024. The trial is likely to take a long time to conclude. Thus, it is prayed that petitioner be released on regular bail.

On the other hand, learned counsel appearing for complainant/respondent No. 2 and the victim submits that the victim had gone with petitioner of her own free will and accord and even, there is no intention on behalf of the victim to marry the petitioner.

Per Contra, learned counsel for the State vehemently opposes the prayer for grant of regular bail to the petitioner and refers to the statement of the victim recorded under Section 164 Cr.P.C. dated 11.02.2024 (Annexure P-4), wherein she has stated that *'On 09.02.2024, I was at my home with my brother-sister. My parents were not at home. At about 03:00 O'clock, Sachin came to our home and dragged me forcibly with him. I did not raise an alarm'*. Learned counsel for the State further submits that during the course of investigation, offence under Section 452 IPC has been added. It is stated that at the time of alleged occurrence, the victim was a minor girl of 16½ years of age, and under the provisions of POCSO Act, any alleged consent of victim is immaterial.

Learned counsel for the State has filed custody certificate dated 07.05.2024, which is taken on record, as per which the petitioner has been in custody as an undertrial for a period of 02 months and 26 days. As per custody certificate, there is no other case against the petitioner. On instructions, from ASI Madan, learned counsel for the



State further submits that challan has been presented before the trial Court and charges are yet to be framed. Learned counsel also submits that the victim had refused to undergo medico-legal examination.

At this stage, reference may be made to a recent judgment of High Court of Karnataka in **Criminal Petition No. 13469 of 2023 (482) G. Raghu Varma vs. State of Karnataka and others**, decided on **19.02.2024**, Law Finder Doc ID # **2506169**, wherein it has been held that consensual adolescent relationships cannot be criminalized. Relevant para No. 7, is reproduced as under:-

“7. The object of POCSO Act is to protect minors from sexual abuse and not to criminalize the consensual relationship between two adolescents who had consensual sexual intercourse without knowing the consequences. The petitioner and the survivor come from the lower socio economic segment having limited access to information and knowledge, thus depriving them about the consequences in having consensual sexual intercourse. Though having sexual intercourse consensually with the minor is an offence under the POCSO Act, however, having regard to the facts and circumstances of the case, to secure the ends of justice, it would be appropriate to quash the impugned proceedings, otherwise, it would result in miscarriage of justice to the survivor and the child.”

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 also the fact that trial



has not commenced as the same is still at the stage of framing of charges, therefore, its conclusion will take considerable time; and no useful purpose would be served by further detention of the petitioner in custody. Thus, the present petition is **allowed**.

The petitioner-Sachin S/o Ashok Rai, 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.

08.05.2024
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(NIDHI GUPTA)
JUDGE

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