

Sr. No.220

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-34693-2023 (O&M)
Reserved on: 01st April, 2024
Date of decision: 09th April, 2024

RAHUL SAHU **.....Petitioner**

versus

STATE OF HARYANA **.....Respondent**

CORAM: HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present: Mr. B.S. Mamli, Advocate
for the petitioner.

Mr. Amrik Singh Narwal, DAG, Haryana.

HARPREET KAUR JEEWAN, J.

1. The instant petition has been filed by the petitioner under Section 439 of the Code of Criminal Procedure, 1973 seeking regular bail in case FIR No.166 dated 27.10.2022, under Sections 363, 366 IPC and Section 6 of Protection of Children from Sexual Offences Act, 2012, registered at Police Station Bajghera, District Gurugram.

2. As per the prosecution case, on 26.10.2022 at about 05:00 PM, the prosecutrix, aged about 14 years, had gone to attend her tuition classes but, she did not come back to her home, as such, the matter was reported to the Police. It is an allegation against the petitioner that the petitioner had enticed away the minor prosecutrix on 26.10.2022 and took her to various places and sexually abused her. Ultimately, on 01.11.2022, the prosecutrix was recovered.

3. Learned counsel for the petitioner contends that the trial is complete. Statement of the prosecutrix and her father has already been recorded during trial.

The father of the prosecutrix has not supported the prosecution case. Even the

prosecutrix has stated that the petitioner is known to her and they remained in a love relationship for about one year. The petitioner had not forced upon the prosecutrix.

4. Learned State counsel has opposed the present petition on the ground of gravity of allegations levelled against the petitioner.

4.1 Status report dated 13.09.2023, by way of affidavit of Sh. Shiva Archan, HPS, Assistant Commissioner of Police, West Gurugram, has been filed on behalf of respondent-State of Haryana, along with medico-legal report (Annexure R-1), FSL Report (Annexure R-2), disclosure statement (Annexure R-3) and statement of the prosecutrix recorded under Section 164 Cr.P.C. (Annexure R-4), which are taken on record.

4.2 Status report dated 16.12.2023, by way of affidavit of Sh. Shiva Archan, HPS, Assistant Commissioner of Police, West Gurugram, has also been filed on behalf of respondent-State of Haryana, along with deposition of victim (Annexure R-5), deposition of SI Naresh Kumar (Annexure R-6), deposition of father of the prosecutrix (Annexure R-7) and custody certificate (Annexure R-8), which are taken on record.

4.3 Another status report dated 19.02.2024, by way of affidavit of Sh. Shiva Archan, HPS, Assistant Commissioner of Police, West Gurugram, has been filed on behalf of respondent-State of Haryana, along with date of birth proof of the prosecutrix (Annexure R-1), medico-legal report (Annexure R-2), FSL Report (Annexure R-3), disclosure statement (Annexure R-4), statement of the prosecutrix recorded under Section 164 Cr.P.C. (Annexure R-5), deposition of the victim (Annexure R-6), deposition of father of the victim (Annexure R-7) and custody certificate (Annexure R-8), which are taken on record.

5. I have considered the aforesaid contentions and perused the paper book.

6. The prosecutrix was aged about 14 years at the time of the alleged occurrence. As per the facts of the case, the prosecutrix went missing from her house on 26.10.2022 and she was recovered on 01.11.2022. As per Column No.22 of the medico-legal report, annexed as Annexure R-1 with the status report dated 13.09.2023, swelling was seen around the perineal musculature during the examination of the prosecutrix. As per the history mentioned in Column No.18 of the said report, the prosecutrix has given history of sexual assault committed upon her by the petitioner. As per the deposition of the prosecutrix in the Court (Annexure R-5), the petitioner had taken the prosecutrix to Haridwar (Uttarakhand) and stayed there for six days. Ultimately, on 31.10.2022, they returned to Gurugram. The prosecutrix has categorically stated that on 26.10.2022, the petitioner/accused Rahul developed physical relations with her, however, she had stated that the said physical relations were made with her consent. The prosecutrix is minor, as such, the consent given by the prosecutrix is *prima facie* immaterial, however, the facts are a matter of trial.

7. As per the status report dated 19.02.2024, out of total 12 prosecution witnesses, 08 have already been examined. It is further the case of the prosecution that the petitioner was residing in a rented accommodation in the same building where the prosecutrix is residing. When the parents of the prosecutrix used to go for their duty, the petitioner used to visit the house of the prosecutrix and commit rape upon her.

8. The prosecutrix was minor at the time of the occurrence and the offence alleged to have been committed by the petitioner under Section 6 of the

petitioner is alleged to have enticed away a minor girl, who was residing in his neighbourhood in the same building. The petitioner used to live in a rented accommodation in the vicinity of the prosecutrix and he *prima facie* allured the minor prosecutrix. The offence alleged to have been committed by the petitioner under Section 6 of the POCSO Act is punishable for a minimum period of 20 years which may extend upto imprisonment for life which shall mean imprisonment for the remainder of natural life of that person and shall also be liable to fine, or with death.

9. The petitioner lives in the vicinity of the prosecutrix and if released on bail, he is likely to commit such acts in future, as such, in view of the facts and circumstances of this case, it is not in the interest of justice to allow the present petition. Consequently, the present petition stands dismissed.

10. However, it is made clear that nothing expressed hereinabove would be construed to be an expression of opinion on merits of the case.

11. All the pending miscellaneous applications, if any, shall stand disposed of.

(HARPREET KAUR JEEWAN)
JUDGE

09th April, 2024
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Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No