



Date of decision: 23.09.2024

...PETITIONER

V/S

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Sunny Chauhan, Advocate
for the petitioner.

Mr. Vikas Bhardwaj, AAG Haryana.

HARPREET SINGH BRAR J. (ORAL)

1. This is the first petition filed under Section 439 of Cr.P.C. seeking grant of regular bail to the petitioner in case bearing FIR No. 71 dated 12.02.2024 registered under Sections 365, 376(2(N) of Indian Penal Code and Section 6 of Protection of Children from Sexual Offences Act 2012 at Police Station Gannaur, District Sonapat.

2. The FIR(supra) was registered on the statement of complainant- Mukesh Devi on the allegations that she is having five children. Her husband has already died. Her eldest daughter's name is Sumtira, who is married. Then her son Sumit and daughter KXXXXX whose date of birth is 07.06.2004, and thereafter her daughter Nishu. The youngest daughter is Kajal. Her daughter KXXXXX had gone somewhere without telling them on 03.02.2024. She had enquired on her own but she could not find anything about KXXXXX. She was wearing red color suit salwar, sleepers. She had gone for labour work, when she came back she could not find her daughter KXXXXX. Search should be conducted. Mobile number of her daughter was 8168804700. She had apprehension that somebody had kidnapped her daughter. On the basis of aforesaid allegations, FIR(supra) was registered.



3. Learned counsel for the petitioner *inter alia* contends that petitioner has been falsely implicated in the present case. Petitioner and daughter of complainant were in love with each other and when her daughter became pregnant, both of them had eloped due to opposition of the family. Even during the medial examination, the prosecutrix had refused to get her pregnancy terminated as she wanted to keep the baby and even the complainant had shown her willingness to do the same. It is further contended that the prosecutrix was examined as PW-1 and complainant was examined as PW-2 and both of them did not support the case of the prosecution and were declared hostile by the Public Prosecutor. The petitioner is behind the bars since 24.03.2024 and he is not involved in any other case and proximity in the age between the prosecutrix and the petitioner, requires a lenient view. Age of the prosecutrix has not been proved in accordance with law and it would be moot point to be determined by learned trial Court as to whether the provisions of Protection of Children from Sexual Offences Act, 2012 are proved or not.

4. Per contra, learned State counsel filed the custody certificate, which is taken on record and opposes the prayer made by learned counsel for the petitioner on the ground that the fact that prosecutrix was found to be pregnant, itself is sufficient to prove the complicity of the petitioner and as such he is not entitled to be released on bail.

5. Having heard the learned counsel for the parties and after perusing the custody certificate, it transpires that petitioner is behind the bars since 24.03.2024 i.e. for 05 months and 27 days and out of total 17 prosecution witnesses, only 07 have been examined so far, therefore, the trial has not even reached halfway mark. Culpability, if any, would be determined at the time of

the trial. The petitioner is not involved in any other case.

6. In view of the above, the present petition is allowed and the petitioner-Sushil is ordered to be released on regular bail, subject to his furnishing bail bonds/surety bonds to the satisfaction of CJM/Duty Magistrate concerned.

7. Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and the trial Court shall proceed without being prejudiced by observations of this Court.

September 23, 2024

Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

(i)	Whether speaking/reasoned	Yes/No
(ii)	Whether reportable	Yes/No