

102 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-2137-2024 IN/AND
CRM-M-60279-2023 (O&M)
Date of Decision: 19.01.2024

VIPIN

.....PETITIONER

Vs.

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present: Mr. Dharamveer Singh Phour, Advocate,
for the applicant-petitioner.

Mr. Amrik Singh Narwal, D.A.G. Haryana.

HARPREET KAUR JEEWAN J. (ORAL)

CRM-2137-2024

1. By this application, the applicant-petitioner seeks permission to place on record a copy of the date of birth certificate as Annexure P-12 with the accompanying petition.

2. The application is allowed and the aforesaid copy of the birth certificate is ordered to be taken on record as Annexure P-12 subject to all just exceptions with the accompanying petition. Office to tag the same at appropriate place.

CRM-M-60279-2023

1. The present petition has been filed under Section 438 Cr.P.C. for grant of anticipatory bail to the petitioner in case FIR No. 0340 dated, 19.11.2022, registered at Police Station Sector 65, District Gurugram, under

Section 346 of the IPC (Sections 363, 366, 212 read with 120-B thereof were added later on)

2. Counsel for the petitioner *inter alia* contends that as per the Aadhar Card (Annexure P-2) date of birth of the prosecutrix is 01.01.2004 and she was major at the time of registration of the FIR. The petitioner and the prosecutrix both are major. On 19.11.2022 they left Gurugram and reached Prayagraj at Uttar Pradesh and they solemnized their marriage on 27.11.2022 and now the petitioner is also blessed with a child. The marriage certificate Annexure P-4 was issued. Thereafter, the petitioner and the prosecutrix filed a Writ Petition No. 38526-2022 in Hon'ble the Allahabad High Court and as per the order dated 16.12.2022 (Annexure P-6), the said writ petition was disposed of.

3. It is further contended on behalf of the petitioner that he got his marriage registered as per the provisions of the Uttar Pradesh Marriage Registration Rules, 2017 and certificate of registration of marriage dated 17.02.2023 (Annexure P-7) was issued. The parents of the prosecutrix filed a civil miscellaneous recall application No. 2 of 2023 for recalling the order dated 16.12.2022 but the said application was dismissed by Hon'ble the Allahabad High Court, vide order dated 24.05.2023 (Annexure P-8). The petitioner came to know about the registration of the present FIR against him. He was admitted to interim bail, vide order dated 16.08.2023 (Annexure P-3) passed by the Additional Sessions Judge, Gurugram. As per the said order, the petitioner was directed to join investigation as and when required by the IO but due to miscommunication with the counsel, the counsel for the

petitioner could not inform the petitioner with the said directions, as such his bail application was dismissed, vide order dated 19.08.2023 (Annexure P-10), passed by the Additional Sessions Judge, Gurugram. Thereafter, he filed a second bail application under Section 438 Cr.P.C., which was also dismissed by the Additional Sessions Judge, vide order dated 15.09.2023 (Annexure P-11). The petitioner is ready to join the investigation.

4. Learned State counsel opposed the bail application. In the status report filed by way of an affidavit of Sh. Priyanshu Dewan, Assistant Commissioner of Police, Badshahpur, Gurugram, it has been alleged that on 23.11.2022, the complainant had produced the photocopy of the Aadhar Card of his daughter, as per which the age of the prosecutrix was less than 18 years. As such, the offence under Section 363 and 366 IPC were added.

5. Referring the status report, the State counsel contends that on receiving a letter that petitioner had solemnized the marriage with the prosecutrix and obtained protection from Hon'ble the Allahabad High Court, the school leaving certificate of the victim was also obtained as per which the date of birth of the victim was found to be 01.01.2008 (Annexure R-1). The supplementary statement of the complainant was recorded wherein he produced the birth certificate of the victim in which the date of birth was found to be 01.01.2008 (Annexure R-2). The co-accused of the petitioner namely Shailender was arrested on 10.04.2023 and '*challan*' against the co-accused of the petitioner had already been presented before the trial Court. The State counsel contends that the prosecutrix is yet to be traced out.

6. I have considered the contentions raised on behalf of learned counsel for the parties and perused the documents.

7. It is the case of the petitioner that the prosecutrix is a major on the basis of Aadhar Card (Annexure P-2) and she has been granted protection by the High Court of Allahabad as per the order dated 16.12.2022 (Annexure P-6). In support of the age, the petitioner and the prosecutrix have produced the Aadhar Card of the prosecutrix where her date of birth is recorded as 01.01.2004.

8. *Per contra* during the investigation of the present FIR which was registered on 19.11.2022 at the instance of the father of the prosecutrix, the investigating officer has collected the documentary proof that the date of birth of the prosecutrix is 01.01.2008 and she was minor on the day of alleged occurrence. The State has placed reliance upon the birth certificate which has been issued by the Registrar (Births & Deaths), Primary Health Centre, Department of Medical and Health (Government of Uttar Pradesh).

9. The entry in the said birth certificate is corroborated by the entry in the school leaving certificate Annexure R-1.

10. As per the birth certificate issued by the Registrar (Births & Deaths), Primary Health Centre, Department of Medical and Health (Government of Uttar Pradesh) and by the entry in the school leaving certificate, the victim is minor on the day of occurrence. The said documents have been disputed by the petitioner and it is a matter of trial.

11. The birth certificate issued by the Corporation or Municipal Authority or Panchayat is having a preference even over the medical opinion

and is one of the recognized document in age determination inquiry. Section 94 (2) of the Juvenile Justice (Care and Protection of Children Act), 2015, reads as under:-

*“94. **Presumption and determination of age**,---(1) Where, it is obvious to the Committee or the Board, based on the appearance of the person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry under section 14 or section 36, as the case may be, without waiting for further confirmation of the age.*

(2) In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining --

(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:

Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.

(3) The age recorded by the Committee or the Board to be

the age of person so brought before it shall, for the purpose of this Act, be deemed to be the true age of that person.”

12. Keeping in view the fact that *prima facie* there is a documentary proof, as well as the statement of the father of the complainant that the prosecutrix is minor, this Court is of the considered opinion that benefit of anticipatory bail cannot be granted to the petitioner in such circumstances.
13. The victim is yet to be recovered. Her statement is yet to be recorded by the investigating agency, as well as by the Magistrate under Section 164 Cr.P.C.
14. In view of the aforesaid circumstances, it is not a fit case for exercising the jurisdiction under Section 438 Cr.P.C. keeping in view the interest of prosecutrix, who is alleged to be minor, no ground is made for anticipatory bail.
15. Consequently, the petition is dismissed.
16. However, it is made clear that nothing expressed hereinabove would be construed to be an expression of opinion on merits of the case.
17. Pending miscellaneous application (s), if any, shall also stand disposed of.

January 19, 2024
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(HARPREET KAUR JEEWAN)
JUDGE

Whether Speaking	Yes
Whether reportable	No