

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

4. CRM-M-63486-2023 (O&M)
Reserved on:12.08.2024
Date of pronouncement:22.10.2024

BHOLU PARSAD @ ARYA
...Petitioner
Versus

STATE OF HARYANA AND ANOTHER
...Respondents

CORAM: HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present: Mr. Rakesh Dhiman, Advocate
for the petitioner.

Mr. Kirpal Singh Thakur, AAG, Haryana.

Mr. Abhimanyu Kalsy, Advocate
for respondent No.2.

HARPREET KAUR JEEWAN , J.

1. The present petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case bearing FIR No.114 dated 18.06.2023 under Sections 376(2)N, 506 IPC and Section 6 of the POCSO Act, 2012 registered at Police Station Linepar, Bahadurgarh, Jhajjar, District Jhajjar.
2. Custody certificate dated 11.08.2024 has been filed on behalf of the respondent-State, which is taken on record.
3. As per the prosecution case, the case was registered on the basis of the complaint given by the mother of the prosecutrix with the allegation that the petitioner had been repeatedly committing rape upon the victim. The petitioner used to threaten the victim that he would kill her father and brother, if she would disclose the incident to anyone. After the registration of the FIR, the medical

examination of the victim was got conducted and pregnancy test was found to be positive. The victim was referred to PGIMS Rohtak, where she was ultra sonographically examined and found pregnant by 18 weeks. The pregnancy was terminated and the sample of the abortus was sent for DNA examination. The statement of the victim was also recorded under Section 164 Cr.P.C., wherein she had confirmed the allegations against the petitioner.

4. Learned counsel for the petitioner contends that the petitioner as well as the complainant are migrant labourers from Bihar state. Both the families of the petitioner and complainant were on visiting terms and talks regarding their marriage were going on between the families. However, subsequently the parents of the petitioner did not agree to the marriage, which led to the registration of the present FIR. Learned counsel for the petitioner further contends that prosecution has already examined the material witnesses including the prosecutrix, who did not support the case of the prosecution. The petitioner is ready to face the trial and the petitioner and the prosecutrix are still ready to marry each other. The petitioner is in custody since 18.06.2023.

5. Learned counsel for the petitioner submits that as per the school result records i.e. result of class V (Annexure P-5) of the prosecutrix, her date of birth is recorded as 10.12.2005. Even as per the transfer certificate issued by the Headmaster, Primary School, Eksar, Balia Area Navanagar, Balia, the date of birth of the prosecutrix is recorded as 10.12.2005 (Annexure P-6). Investigation is complete and final report under Section 173 Cr.P.C. has been presented before the trial Court. He further submits that the trial is going to take time to conclude, as such, prayer for releasing the petitioner on bail has been made.

6. On the other hand, learned State counsel has opposed the bail petition

on the ground of gravity of allegations against the petitioner. Learned State counsel submits that even the prosecutrix was 14 years of age at the time of the alleged occurrence and she was found pregnant as per her medical examination.

7. Learned counsel for respondent No.2 submits that the prosecutrix has no objection, in case the petitioner is released on bail. While referring to the affidavits of the parents of the prosecutrix i.e.Chhote Lal son of Gaurishankar and Phoolwati Devi @ Foolmati Devi w/o Chhote Lal, learned counsel for respondent No.2 submits that even the parents have testified the date of birth of the prosecutrix as 10.12.2005 and at the time of executing the said affidavits, the age of the prosecutrix was 18 years and 7 months. Parents of the prosecutrix have also testified that prior to the registration of the FIR, the marriage talks of the prosecutrix with the petitioner were going on and due to some misunderstanding and confusion, the petitioner and his parents did not agree to the marriage. Now, both the families agreed for this alliance and they are ready to perform the marriage of the petitioner with the prosecutrix. The affidavit of the prosecutrix dated 10.07.2024 to the same effect is also on record.

8. I have heard the learned counsel for the parties and perused the relevant documents.

9. It is not disputed that investigation is complete; final report under section 173 CrPC has already been presented before the trial court and the petitioner is facing the trial after framing of the charges. Even the statements of the prosecutrix and her parents have been recorded by the trial court and the testimonies are part of the paper book as Annexures P-1 to P-3. The prosecutrix has stated that there were talks of marriage going on and also confirmed that there was consensual physical relationship between the petitioner and the prosecutrix.

However, the prosecutrix has stated that the petitioner did not commit rape upon her. Similar is the deposition of the mother of the victim (Annexure P-2) and father of the victim (Annexure P3). The petitioner has taken plea that the prosecutrix was major and her date of birth recorded in the school records is 10.12.2005. The petitioner refuted the allegations that the date of birth of the prosecutrix is 06.10.2008.

10. As per the status report dated 14.03.2024, the Investigating agency conducted verification of the date of birth of the victim and submitted the verification report (Annexure R-1) issued by the Head Master, Primary School, Eksaar, Area Navanagar (Baliya), as per which the victim has studied in the said school from 01.07.2010 to 01.07.2014 and as per the school record, the date of birth of the victim is recorded as 10.12.2005. The Investigating agency has also verified about the correctness of the mark-sheet and school leaving certificate of the prosecutrix. It has been further noticed that in the educational records of Class 6, 7 and 8, the date of birth of the prosecutrix is recorded as 06.10.2008 (Annexures R-2 and R-3).

11. Some contradictions have been found in the age of the prosecutrix recorded in the school records. Entry in the school records, where the victim is alleged to have completed her 5th class and the entry in the date of birth in the school records from where she has allegedly completed her 8th class appears to be contradictory. The petitioner is facing the trial. The determination of real age of the prosecutrix is a matter of trial. The petitioner is a young person of 23 years of age. As per the custody certificate dated 11.08.2024, the petitioner has already undergone a period of 01 year 01 month and 23 days of custody as under-trial and there is no other case registered against the petitioner. There are total 21

prosecution witnesses and material witnesses have already been examined.

Conclusion of trial is going to take time.

12. In view of the above circumstances, the petitioner is able to make out a case to releasing him on bail during the trial, as such, without expressing any opinion on the merits of the case, the present petition is allowed.

13. The petitioner is ordered to be released on regular bail, subject to his furnishing adequate bonds and surety bonds to the satisfaction of the trial Court/Duty Magistrate concerned.

14. Pending miscellaneous application (s), if any, shall also stand disposed of.

(HARPREET KAUR JEEWAN)
JUDGE

22.10.2024
P.Bhatt

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No