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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-27539-2024(O&M)
Date of Decision: 05.02.2025

Warish

....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Ms. Ashu Rana, Advocate, for the petitioner.

Mr. Vishal Kashyap, DAG, Haryana.

Ms. Ramandeep Kaur, Advocate for
Mr. Arun Sharma, Advocate, for the complainant.

Ms. Priya Sahoo, Advocate, for the victim.

JASGURPREET SINGH PURI, J. (Oral)

1. The present petition has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in FIR No.135 dated 30.07.2023, under Sections 363, 366-A, 376(2) (N) IPC, Section 6 of POCSO Act and Section 10 of Prohibition of Child Marriage Act, registered at Police Station Uttawar, District Palwal.

2. Learned counsel appearing on behalf of the petitioner submitted that the petitioner is in custody for 1 year and 1 month and one prosecution witness who is the prosecutrix has been examined out of total 15 cited witnesses. She submitted that it is a case where the allegations against the petitioner were that he had enticed away the prosecutrix who was already married and submitted that at the time of deposition before the learned trial



Court, prosecutrix has not supported the prosecution version and she has been declared as hostile. She also submitted that even in the FIR the age of the prosecutrix has come out to be 19 years but as per the school certificate, her age was less than 18 years and about 17½ years and thereafter even the invocation of POCSO Act was also erroneous. She submitted that considering the aforesaid facts that the prosecutrix has turned hostile, the petitioner may be considered for the grant of regular bail.

3. On the other hand, Mr. Vishal Kashyap, DAG, Haryana has vehemently opposed the grant of regular bail to the petitioner by submitting that it is a case where although the custody of the petitioner has come out to be 1 year and 1 month but the age of the prosecutrix was less than 18 years and it was about 17 years and 4 months which is evident from the school certificate. He also submitted that although the prosecutrix has been examined and she has not supported the prosecution version but it was a case where the provisions of POCSO Act and even the Prohibition of Child Marriage Act were invoked. He submitted that as per the allegations, the petitioner is a married person and he is having 3-6 children and even the prosecutrix was also married somewhere else and after the petitioner had enticed away the prosecutrix who was minor at that point of time, she became pregnant and delivered a child. He submitted that earlier the prosecutrix had denied the DNA matching but it was thereafter vide order dated 20.08.2024 when the victim was present in the Court, she had submitted that she is ready to give the DNA sample for examination and thereafter, the DNA sample was sent to the Forensic Science Laboratory and it was found in the report that DNA of the newly born child was matching with the petitioner. He submitted that considering the aforesaid



gravity of the offence involved, the petitioner does not deserve the concession of regular bail.

4. I have heard the learned counsels for the parties.

5. The petitioner is in custody for 1 year and 1 month and as per learned counsel for the petitioner, the prosecutrix was major and above the age of 18 years but as per the learned State counsel, she was minor of about 17 years and 4 months. As per the allegations, the petitioner has enticed away the prosecutrix and thereafter she became pregnant. As per the learned State counsel, the DNA has also matched. The petitioner is stated to be married earlier also and having 3-6 children and the prosecutrix is also stated to be married. The mere fact that the prosecutrix at the time of deposition has turned hostile itself cannot become a ground for grant of regular bail because that is only a relevant factor which can be seen at the time of final adjudication by the learned trial Court. This Court is of the considered view that considering the aforesaid totality and facts and circumstances and in view of the gravity and seriousness of the offence involved, the petitioner does not deserve the concession of regular bail.

6. Consequently, the present petition is dismissed.

7. However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is meant for the purpose of deciding the present petition only.

05.02.2025

rakesh

(JASGURPREET SINGH PURI)
JUDGE

Whether speaking	:	Yes/No
Whether reportable	:	Yes/No