

# Law Today Live Doc. Id. 15087

**PUNJAB AND HARYANA HIGH COURT**

**Before: Anil Kshetarpal, J.**

CRM-M-49452-2019(O&M)

Decided on: 02.07.2020

Naveen Kumar

Petitioner

Versus

State of Haryana

Respondent

Present:

Mr. R.S.Rai, Sr. Advocate, with Mr. Gautam Dutt, Advocate, for the petitioner.

Mr. Manish Bansal, DAG, Haryana

**Indian Penal Code, 1860 (45 of 1860), Section 376, 354-A, 34 – Protection of Children from Sexual Offences Act, 2012 (32 of 2012), Section 4, 8 -- Code of Criminal Procedure, 1973 (2 of 1974), Section 439 - - Regular bail -- Petitioner is in custody since 09.08.2019 -- Prosecutrix has denied the fact that the petitioner established physical relations with her -- Prosecutrix was got declared hostile by the prosecution – It would not be appropriate to further continue to incarcerate the petitioner – Conclusion of the trial is likely to take time, hence, the petitioner is directed to be released on regular bail.**

(Para 7,8)

**JUDGMENT**

**ANIL KSHETARPAL, J. –**

1. The petitioner prays for grant of regular bail pending trial in a criminal case arising out from FIR No.63, dated 26.05.2019, registered under Section 376/354-A/34 IPC and Sections 4 and 8 of the POCSO Act, 2012, at Police Station Women, Sector 51, District Gurugram.

2. In a nutshell, the case of the prosecution has been noticed by the learned Additional Sessions Judge (Fast Track Court), Gurugram, in paragraph 3 of the order, which is extracted as under:-

*“3.The present case was registered on an application bearing No.479-5P dated 25.5.2019 of the mother of victim girl. The complainant alleged that “she was resident of village Ladwa, District Kurukshetra. Her husband had died. She had five children. Her elder two daughters were married. Her daughter at 3rd number, who was still unmarried, started doing part-time private job of marketing after death of her husband. Because of her job, she had to come to Gurugram and Manesar occasionally. When she returned from there recently, her daughter was however very quite. When she asked from her, she started crying and she told her that one Sunil Shah, who was employed in Mansar company, met her in connection with their job and told her that he would arrange a better and permanent job for her by which she would earn Rs.25,000/- per month instead of her present salary of Rs.12,000/-. Thereafter, as disclosed by her daughter, on 23.12.2018, Sunil Shah called her at Guru*

*Dronacharya, Metro Station and took her to Sikanderpur in a hotel by telling her that the owner of the company, in which her job was fixed, was coming. After getting details about her family from her, Sunil Shah told her that the owner was not coming and he would again call her telephonically in this regard. He then again called her on 26.12.2018 in the same hotel on the same pretext of meeting with the owner and made her drink the juice in which some intoxicated substance was mixed. After drinking the same, her daughter fell unconscious, Sunil Shah developed physical relations with her daughter in that condition and prepared an objectionable video of her. He threatened her daughter that if she disclosed the incident to anyone, he would viral her photos on Internet. On 5.2.2018, he called her daughter in Sector-1, Manesar at a flat and developed physical relations with her under threat and blackmail. On the same way, he introduced her to his two friends, namely, Naveen Chauhan and Raja Babu. During that period, Sunil Shah gave the phone number and objectionable video of her daughter to Naveen Chauhan. On 5th April, Naveen Chauhan called her daughter through phone, compelled her to meet him and when she refused, he repeated the threat of humiliating her by uploading videos on Internet. Under pressure, Naveen Chauhan took her daughter in a hotel in Manesar and developed physical relations with her by force. After sometime, he called his friend Raja Babu and asked him to drop her. However, on the way, Raja Babu also misbehaved with her daughter and since then, Raja Babu also started making telephonic calls to her daughter. As further disclosed by her daughter, she was left with no option except coming suicide as she was badly trapped by Sunil Shah, Raja Babu and Naveen". The complainant prayed that a strict legal action be taken against all three culprits. On this complaint, formal FIR was registered under Sections 376/354A/34 IPC. Investigation was conducted by Mukesh, L/SI as well as by Usha Kundu, ACP. During investigation statements of witnesses were recorded and site plan of the place of occurrence was prepared. The statement of prosecutrix under Section 164 Cr.P.C was got recorded. The prosecutrix disclosed her age to be 17 years 5 months old before learned Magistrate hence, Section 4/6/8 of POCSO Act and Section 328 IPC were added in the FIR. Thereafter, prosecutrix was medico legally examined and she was provided counsellings. Requisite report of GPS Residence Hotel and Shri Shoot Hotel (Crown Mall) was obtained and age proof of prosecutrix was collected form the Primary School, as per which, the date of birth of prosecutrix was 5.12.2001. Call details record of all the culprits were also collected. It transpired that telephonic calls had been made between the above named culprits and the prosecutrix and that locations was correct as per version of prosecutrix. Screen shoots of whatsapp messages, which were sent to the prosecutrix by Naveen Chauhan and Raja Babu, were handed over by the prosecutrix to I.O. After collecting sufficient material, applicant-accused was apprehended in this case and was got medico legally examined. Consequent upon further verification of allegations by senior police officials, Section 328 IPC and 6 of POCSO Act were deleted. On completion of investigation, challan report was filed in the court."*

3. Hearing of the case was held through video conferencing on account of

restricted functioning of the Courts due to Covid-19 pandemic.

4. Learned counsel for the petitioner contends that the prosecutrix while deposing in the Court has denied that the petitioner ever made any physical relation with her. He submitted that the initial allegations were against Sunil Shah but found false by the prosecuting agency. He submitted that Sunil Shah a co-accused, has not been charged under Section 376 IPC and Section 6 of POCSO Act.

5. On the other hand, learned counsel for the State has submitted that the prosecutrix was a minor at the time when the offence was committed. He further submitted that the trial of the case has commenced.

6. This court has considered the submissions.

7. The petitioner is in custody since 09.08.2019. The prosecutrix has denied the fact that the petitioner established physical relations with her. The prosecutrix was got declared hostile by the prosecution.

8. Keeping in view the facts of the case and without commenting on merits, this Court is of the considered view that it would not be appropriate to further continue to incarcerate the petitioner. The petitioner is in custody since 09.08.2019 and conclusion of the trial is likely to take time, hence, the petitioner is directed to be released on regular bail subject to furnishing of adequate surety to the satisfaction of the Chief Judicial Magistrate/Duty Magistrate, concerned.

9. Accordingly, the present petition is allowed with the aforesaid directions.

**Petition allowed.**

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