



**IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH**

202

CRM-M-4553-2025 (O&M)
Date of Decision: 02.09.2025

RITESH YADAV

... Petitioner

VERSUS

STATE OF HARYANA

... Respondents

CORAM: HON'BLE MS. JUSTICE SHALINI SINGH NAGPAL

Present: Mr. Vishal Garg Narwana, Advocate,
Mr. Khushwant Saharan, Advocate
Mr. Arishdeep Mraad, Advocate and
Ms. Chetna Rao, Advocate for the petitioner.

Mr. Kshitij Bharti, Assistant Advocate General, Haryana.

Mr. G.S. Sullar, Advocate,
Ms. Devaki Anand Sullar, Advocate and
Mr. Haneesh Kumar, Advocate for the complainant.

SHALINI SINGH NAGPAL, J. (ORAL)

Petitioner seeks anticipatory bail in case arising out of FIR No. 006 dated 04.01.2025 under Sections 376(2)(n) of Indian Penal Code and Section 04 of Protection of Children from Sexual Offences Act, 2012, Police Station Mujesar District Faridabad. This is first petition for anticipatory bail.

Learned counsel for the petitioner argued that respondent No. 2-complainant in the FIR had attained the age of majority as was clear from a reading of the FIR itself. He further submitted that she was in relationship with the petitioner for 05 years i.e. from 07.12.2019 to May 2024. He referred to her statement recorded under Section 183 BNSS, on 05.01.2025, wherein she



stated that she was 23 years of age. He further relied upon copy of Aadhar Card (Annexure P-4) and progress report of N.D. Public School, Faridabad (Annexure P-5), relating to the prosecutrix, wherein her date of birth was recorded as 12.12.2001. He urged that considering the age of the prosecutrix and the admitted version of prolonged relationship with the petitioner, no offence under Section 376 IPC was made out and in this context, referred to judgments of Hon'ble Supreme Court in case bearing Criminal Appeal No. 183 of 2014 decided on 06.02.2025 titled *Tilku @ Tilak Singh Vs. The State of Uttarakhand*, Criminal Appeal arising out of SLP(CRL.) No. 8549 of 2023 decided on 03.03.2025 titled *Rajnish Singh @ Soni Vs. State of U.P. and Another, Deepak Gulati Vs. State of Haryana 2013(7) SCC 675*. It was further argued that allegation of sexual intercourse on the promise of marriage did not constitute an offence under Section 376 IPC as there was nothing to show that intention of the petitioner was *mala fide*. Reference was also made to statement of prosecutrix recorded under Section 183 BNSS, wherein she herself conceded that she used to meet the petitioner in Oyo Hotel and had physical relations with him. Learned counsel argued that the FIR was an abuse of the process of law. Further, in pursuance of order dated 25.03.2025 of this Court, petitioner had joined investigation and deserved to be enlarged on anticipatory bail.

Learned State counsel assisted by learned counsel for the complainant/victim opposed the prayer for anticipatory bail referring to Annexure R-3, copy of Secondary Certificate Examination of Board of School



Education Haryana of the prosecutrix, wherein her date of birth was recorded as 12.12.2004. It was argued that the Certificate prevailed over the version in the FIR and was bound to be considered by the Court in view of Section 94(2)(i) of the Juvenile Justice Act, 2020. It was, thus submitted that prosecutrix was less than 15 years of age on the date of commission of offence and in view of the specific bar of Section 482(4) BNSS, the application for anticipatory bail was not maintainable. It was urged that petitioner performed marriage with some other girl in December 2024 and had been sending money to the prosecutrix till November 18.11.2024, which clearly implied that he never had any intention to marry her.

Refuting the arguments, learned counsel for the petitioner, referred to ***Ram Chander Vs. State of Haryana and Ors.*** 2025(3) RCR(Criminal) 28 submitting that Section 438(4) Cr.P.C. did not create an absolute bar for granting anticipatory bail to a person accused of offence punishable under Section 376(3), 376DA and 376DB IPC and Court could grant bail in case no *prima facie* case was made out. He also relied upon judgment of the High Court of Assam in Case No. AB/446/2025 decided on 02.06.2025 titled ***Nazir Hussain and 03 Ors. Vs. The State of Assam***, Case No. AB/3022/2024 decided on 12.08.2025 titled ***Jabir Uddin and Another Vs. The State of Assam and Another*** rendered in application(s) under Section 482 BNSS, to support his argument that custodial interrogation of the petitioner was not necessary in such a case. It was submitted that since the police had not yet invoked Section 376(3) IPC, therefore the application for anticipatory bail is maintainable.



Broadly, allegations in the FIR are that the prosecutrix became friendly with the petitioner through Facebook in March, 2019 and she was in love affair with him. It is further argued that on 08.12.2019, petitioner forcefully committed rape on her, without the consent of prosecutrix, saying that that he would marry her. Thereafter also, he had been committing rape forcefully from 07.12.2019 to May 2024 on the promise to marry. Later on, on 03.12.2024, he married some other girl. FIR lodged by the prosecutrix herself, records that her date of birth was 12.12.2001. Undoubtedly, in her statement recorded under Section 183 BNSS, copy of Aadhar Card and copy of School Progress Report, date of birth of the prosecutrix has been recorded as 12.12.2001. However, during investigation of the case, police has recovered Secondary Examination Certificate of Board of School Education Haryana pertaining to the child, wherein her date of birth was recorded 12.12.2004. Calculated thus, her age would be less than 16 years of age on the date of alleged commission of offence.

Age of the prosecutrix is a matter which the trial Court would eventually decide during the trial of the case, after considering the entire evidence available on record. However, at this stage, while deciding the application for anticipatory bail, date of birth Certificate cannot be altogether ignored. The Court cannot proceed on the assumption that prosecutrix was major on the date of alleged commission of offence. Even if her date of birth is taken to be as 12.12.2001, she would still be less than 18 years of age on 08.12.2019. If it is taken as 12.12.2004, she would be less than 16 years of age.



Be that as it may, it cannot be ignored that prosecutrix in the case is a child and her consent for the alleged sexual activity is of no relevance. Allegations against the petitioner are of aggravated penetrative sexual assault on the pretext of marriage, over a long period of time, serious in nature. Even if the petitioner has joined investigation, a fact not disputed, grant of anticipatory bail is not permissible on this score alone. Considering the nature and substance of allegations against the petitioner, severity of punishment, conviction may entail and all relevant facts and circumstances of the case, but without commenting on merits of the case, the application for anticipatory bail is declined.

Pending CRM(s), if any, is also disposed of accordingly.

(SHALINI SINGH NAGPAL)
JUDGE

SEPTEMBER 02, 2025.

Ajay Goswami

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