

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(206)

CRM-M-2422-2020

Date of Decision: 21.12.2021

Sunil @ Sheela

--Petitioner

Versus

State of Punjab

--Respondent

CORAM:- HON'BLE MR. JUSTICE RAJESH BHARDWAJ.

Present:- Mr. G.S. Simble, Advocate for the petitioner.

Ms. Sakshi Bakshi, A.A.G., Punjab.

RAJESH BHARDWAJ.J (Oral)

The present petition has been filed under Section 439 Cr.P.C seeking the benefit of regular bail to the petitioner in case FIR No.0188 dated 8.9.2019 under sections 363, 366-A, 120-B I.P.C and Sections 3 & 4 of POCSO Act (offence under section 376 I.P.C was added later on), registered at Police Station, Civil Lines, Batala, Police District Batala, District Gurdaspur.

Succinctly the facts of the case are that Amarjit Kaur mother of the victim lodged the present FIR, wherein it was alleged that her youngest daughter is studying in 10+1 in Senior Secondary School Girls, Gandhi Camp Batala and her date of birth is 1.5.2003. It was alleged that on 7.9.2019 when the whole family woke up after sleep and her daughter was not found present in the house. She had doubted that her minor daughter had been taken away by Sunil @ Sheela i.e. the present petitioner in connivance with his sister Preeti to solemnize the marriage. Prayer was made for taking legal action against the accused/petitioner.

The petitioner was arrested on 21.9.2019. He approached learned Addl. Sessions Judge, Gurdaspur for the grant of bail but the same was declined vide order dated 21.11.2019. Aggrieved by the same, petitioner has approached this Court for grant of bail.

Learned counsel for the petitioner vehemently contends that the petitioner was falsely implicated in the present FIR only for the reason that the victim was less than 18 years of age. Counsel submits that the relationship between the petitioner and the victim was consensual. Counsel submits that statement of the victim was also recorded under Section 164 Cr.P.C, wherein she deposed that she went with the petitioner with her free will and there was no coercion whatsoever. Counsel further submits that after completion of investigation charges have been framed and the Trial Court is seized of the matter and statements of prosecution witnesses are being recorded. It has been further contended that both the material witnesses i.e. complainant and the victim have been examined by the Trial Court as PW-1 and PW-2 respectively. He has placed on record copies of deposition of these two witnesses wherein complainant Amarjit Kaur has deposed that the petitioner Sunil @ Sheela neither kidnapped her daughter nor committed rape with her. Hence, on the request of learned APP she was declared hostile. Similarly, victim had been examined as PW-2, who also deposed that accused Sunil @ Sheela neither kidnapped her nor committed rape with her and she was also declared hostile on the request of learned APP. Counsel further submits that as both the material witnesses have not supported the case of the prosecution, false implication of the petitioner in the present FIR is *writ large*. It has been submitted that petitioner is behind bars for the last more than 2 years and his further custody is totally

unwarranted and he deserves to be enlarged on bail.

On the other hand, learned State counsel on instructions from SI Gurmeet Singh submits that there are specific allegations against the petitioner. She further submits that victim is less than 18 years of age and if there was any consent on her part, the same has no legal sanctity in the eyes of law. However, she candidly affirms the fact that both the material witnesses i.e. complainant and the victim have not supported the case of the prosecution. State counsel informs the Court that out of the 17 prosecution witnesses 7 including the complainant and victim have been examined by the Trial Court.

I have heard learned counsel for the parties at length and have gone through the records made available.

Petitioner is behind bars since 21.9.2019. Admittedly, complainant and the victim have not supported the case of the prosecution. Even in the statement recorded under Section 164 Cr.P.C victim did not support the allegations levelled in the FIR.

In view of the peculiar facts and circumstances, I find that the veracity of the allegations levelled in the FIR would be established only after conclusion of the trial.

In the totality of circumstances and without making any observations on merits, present petition is allowed. Petitioner be enlarged on bail subject to satisfaction of Trial Court/Duty Magistrate, concerned. Nothing stated herein shall be treated as an expression on the merits of the case.

(RAJESH BHARDWAJ)
JUDGE

21.12.2021

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Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No