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Chandigarh

Sr.No.205

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-22793 of 2020(O&M)
Date of decision:07.01.2021

Sunny

... Petitioner(s)

versus

State of Punjab

... Respondent (s)

Coram: **Hon'ble Mr. Justice Jasgurpreet Singh Puri**

Present: Mr. Nitin Verma, Advocate
for the petitioner.

Mr. Luvinder Sofat, Asst.AG, Punjab.

Through Video Conference

Jasgurpreet Singh Puri, J.(Oral)

CRM-266 of 2021

Allowed as prayed for.

Annexured P-4 is taken on record.

CRM-M-22793 of 2020

Present petition has been filed under Section 439 Cr.P.C for grant of regular bail to the petitioner in FIR No.50 dated 15.05.2019 registered under Sections 363, 366 IPC and Sections 376 IPC, Section 6 POCSO (added later on) at Police Station Kiratpur Sahib, District Rupnagar, Punjab.

Present FIR was lodged on the basis of statement made by Mangat Ram son of Budh Ram resident of Balmik Mohalla Bharatgarh Police Station Kiratput Sahib, District Rupnagar by stating that he is brother

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of four sisters and his youngest sister namely, Pooja aged quarter above 17 years on 11.05.2019 at about 3:00 PM went to market to buy lassi and did not come back and on search being made she was not found. It is stated in the complaint that his sister is minor and has been kidnapped and taken away by unknown person by alluring her.

Learned counsel for the petitioner has submitted that the petitioner has been falsely implicated in the present case and he is in custody for a period of about 05 months and 22 days and he is not involved in any other case. He has submitted that the aforesaid prosecutrix Pooja has gone with the petitioner with her consent because of love affair with him and has referred to Annexure P-2 which is an affidavit given by Pooja in which it is stated that she was in love affair with the petitioner from the last three years and that she has got marriage solemnized with him. He has further submitted that vide Annexure P-4 the complainant namely, Mangat Ram while deposing as PW-1 has also turned hostile.

On the other side, learned State counsel has submitted that in fact the petitioner is the Jija (brother-in-law) of the prosecutrix and at the time of occurrence the prosecutrix were minor and about 17 years of age. The petitioner had earlier performed marriage with the elder sister of the prosecutrix and left her, thereafter, entered into the physical relations with the prosecutrix. He has further submited that the affidavit which has been relied upon by learned counsel for the petitioner is of no significance in view of the fact that the prosecutrix was minor. Learned State counsel has further submitted that mere fact that the complainant has turned hostile during the time of deposition would not vest any right to the petitioner to get a bail in view of the fact that other material witnesses are required to be examined

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and at this stage only one witness is examined. He has further submitted that in case the petitioner is released on bail then he may influence the other witnesses as well and has therefore, prayed for dismissal of the present petition.

I have heard the learned counsel for the parties.

It is a case where the allegations are that minor girl was enticed away by the petitioner and FIR under Sections 363, 366 IPC and 376 read with Section 6 POCSO was lodged against the petitioner. Admittedly, the prosecutrix was minor although the exact date of birth has not come forth. The affidavit which has been attached alongwith the present petition Annexure P-2 would also be of not much significance in view of the fact that the prosecutrix is minor. Apart from the same learned State counsel submits that only one witness has been examined who although turned hostile but other material witnessed are still be examined. Custody of the petitioner is about 5½ months.

Considering the totality and circumstances of the present case, this Court does not find it a fit case to grant regular bail at this state. Consequently, present petition is dismissed. However, nothing stated hereinabove, shall be construed to be an expression on the merits of the case.

7th January, 2021 **[JASGURPREET SINGH PURI]**
Shivani Kaushik **JUDGE**

Whether speaking/reasoned *Yes/No*
Whether Reportable Yes/No