

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(205)

CRM-M-26355-2020(O&M)

Date of Decision: 24.09.2021

Amit Kumar

--Petitioner

Versus

State of Punjab

--Respondent

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

Present:- Mr. Karan Bhardwaj, Advocate for the petitioner.

Mr. M.S. Nagra, A.A.G., Punjab.

RAJESH BHARDWAJ.J (Oral)

Matter has been taken up through video conferencing via Webex facility in the light of the Pandemic Covid-19 situation and as per instructions.

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.173 dated 31.10.2019 under sections 363, 366-A I.P.C (offences under section 376 I.P.C and section 4(2) of POCSO Act were added later on), registered at Police Station, Shimlapuri, District Ludhiana.

Learned counsel for the petitioner vehemently contends that the petitioner was falsely implicated in the present FIR and no offence, as alleged, is made out against him. It has been further contended that FIR in question was got registered by the father of the victim on the basis of the allegations that his daughter, who was 16 years of age went missing on 23.10.2019 and he had suspicion that his daughter was enticed away by Amit Kumar (present petitioner) on the pretext of marriage and action be taken against him. Counsel submits that the allegations in FIR are totally

false and fabricated. It has been submitted that the alleged victim went with the petitioner with her own will and without any coercion. Counsel further submits that the false implication of the petitioner is evident from the very fact that now the trial is in progress and the victim and her mother have been examined by the Trial Court as PW-3 and PW-4 respectively. Counsel has placed on record copies of their testimonies, which would show that the victim had categorically deposed that she did not identify the accused present in the court and as a result she was declared hostile by the Trial Court. Similarly, the mother of the victim namely Nirmala Devi also failed to support the case of the prosecution and thus resiled from her statement. Counsel submits that author of the FIR i.e. the father of the victim has died on 21.1.2021. Counsel would submit that material witnesses have not supported the case of prosecution and thus incarceration of the petitioner is totally unwarranted. Counsel would submit that petitioner is a young boy and is behind bars since 1.11.2019 and hence deserves the concession of bail.

On the other hand, learned State counsel has opposed the submissions made by learned counsel for the petitioner and submits that victim is 16 years of age and thus she is a minor. He would submit on instructions from ASI Jarnail Singh that out of the total 12 prosecution witnesses cited 3 have been given up and 3 have been examined including the victim and her mother. However, he candidly affirms the factual aspect that the victim and her mother have not supported the case of prosecution.

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

There is no gainsaying that petitioner is behind bars since 1.11.2019. The complainant on whose statement the present FIR was registered is no more, however, victim and her mother have not supported the case of the prosecution. The trial would take some time in its final conclusion.

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

24.09.2021

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