

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(211)

CRM-M-49702-2021

Date of Decision: 21.12.2021

Raj Kumar

--Petitioner

Versus

State of Haryana

--Respondent

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

Present:- Mr. Sanjeev Majra, Advocate for the petitioner.

Mr. Vishal Kashyap, D.A.G., Haryana.

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.50 dated 21.3.2021 under sections 365, 376(2)(n) and Section 6 of POCSO Act, registered at Police Station, Model Town, Panipat.

Succinctly the facts of the case are that the FIR in question was lodged by Ram Babu son of Lakhi Chand, who is father of the victim. It was alleged that he was resident of Bihar and living in a rented accommodation in Panipat. He had one son and three daughters. The age of his middle daughter is 15 years. It was further alleged that she left the home without informing. Prayer was made for taking legal action against the culprit.

The investigation commenced and the victim, who is 15 years of age was recovered on 23.2.2021. Her statement was recorded under Section 164 Cr.P.C and Section 376(2)(n) I.P.C read with Section 6 of POCSO Act was added.

The petitioner was arrested on 23.3.2021. He approached learned Addl. Sessions Judge, Panipat for the grant of bail but the same was declined vide order dated 1.11.2021. 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. Counsel submits that the FIR in question was lodged by the father of the victim, however, no coercion is alleged in the FIR. 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. victim and the complainant 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 victim has deposed that neither anybody abducted her nor any sexual assault or rape was committed with her. Hence, on the request of learned APP she was declared hostile. Similarly, complainant, who has been examined as PW-2, also deposed that neither anybody abducted his daughter nor any sexual assault or rape was committed with her and therefore he 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 further custody of the petitioner is totally unwarranted and he deserves to be enlarged on bail.

On the other hand, learned State counsel on instructions from SI Ram Kishan submits that there are specific allegations against the petitioner. He further submits that victim is a minor and her alleged consent

is meaningless in the eyes of law. However, he candidly affirms the fact that both the material witnesses i.e. victim and the complainant have not supported the case of the prosecution. State counsel informs the Court that out of the 17 prosecution witnesses 3 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 23.3.2021. Admittedly, complainant and the victim have not supported the case of the prosecution. In all there are 17 prosecution witnesses out of them 3 have been examined.

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

lucky

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