

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

CRM-M-1049-2022 (O&M)

Date of decision : 05.04.2022

Pardeep Singh

..... Petitioner

versus

State of Punjab

.....Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Anurag Chopra, Advocate
for the petitioner.

Ms. Sakshi Bakshi, AAG, Punjab.

RAJESH BHARDWAJ, J. (Oral)

Prayer in the present petition is for grant of regular bail to the petitioner in case FIR No.169 dated 17.11.2021, under Sections 363, 366-A, 376 of Indian Penal Code and Sections 3 & 4 of POCSO Act, 2012, registered at Police Station City Khanna.

As per the factual matrix of the case, the present FIR was lodged by Charanjit Kaur wherein, she alleged that her daughter i.e. the victim (name concealed), whose date of birth is 16.12.2004, was doing job with ILETS at Samrala. On 16th November, 2021 at 09:00 AM, her daughter went for job but did not reach at the place of job. Her mobile phone was found to be switched off. It was alleged that her daughter is minor and it was suspected that Pardeep Singh i.e. the petitioner had enticed her away for the purpose of marriage. The request was made to take the legal action against the culprits. On lodging of the FIR, the investigation commenced and the prosecutrix was recovered on the very next date i.e. on 17th November, 2021. The petitioner was arrested on 2nd December, 2021. The statement of the victim was recorded under Section 164 Cr.P.C. by Sub Divisional Judicial

Magistrate, Khanna. The prosecutrix deposed before the Court that on 16th November, 2021, she went with Pardeep Singh to Ambala and came back on the next day. She went with Pardeep Singh on her own free will and got married with him. Having been arrested, the petitioner approached the Court of learned Additional Sessions Judge (Fast Track Court), Ludhiana, however, after hearing counsel for the parties, learned Additional Sessions Judge (Fast Track Court), Ludhiana declined the same vide order dated 20th December, 2021. Aggrieved by the same, petitioner has approached this Court for grant of regular bail by way of the present petition.

Learned counsel for the petitioner has vehemently contended that petitioner has been falsely implicated in this case. He submits that the petitioner has been booked in this case only because the prosecutrix is marginally less than 18 years of age. He has submitted that there was no coercion or compulsion from the petitioner and the same is evident from the fact that the statement of the prosecutrix was recorded under Section 164 Cr.P.C. wherein, she specifically deposed that she went with the petitioner with her own free will and performed the marriage with the petitioner. Not only this, after her recovery, the consent of the prosecutrix was taken for her medical examination for which she refused. To buttress his arguments, he has further submitted that the complainant i.e. the author of the FIR and the prosecutrix i.e. the victim have been examined by the learned trial Court as PW-1 and PW-2 respectively. The copy of their depositions have been placed on the record which shows that both these material witnesses have not supported the case of the prosecution and they have been declared hostile on the request of learned Public Prosecutor. Perusal of their testimonies shows that PW-1, mother of the victim deposed that she did not identify the accused present in the Court. She further deposed that accused

neither kidnapped her daughter nor committed any rape with her. She also denied having recorded any statement against the accused before the police. Similarly, the victim who is examined as PW-2 also deposed on the same lines. She refused to identify the accused present in the Court and deposed that neither the accused has been kidnapped her nor committed rape with her. He submits that as the material witnesses have not supported the case of the prosecution, the case of the prosecution falls flat as there is no medical evidence on record as well. He has submitted that in the facts and circumstances of the case, further incarceration of the petitioner is unwarranted and he deserves to be enlarged on bail.

Learned State counsel has opposed the submissions made by counsel for the petitioner. She has submitted that the petitioner is less than 18 years of age and if there is any consent on the part of the victim, the same has no legal sanctity. She further submits that in view of the statutory provisions of Sections 29 and 30 of the POCSO Act, there is a presumption against the petitioner. However, she candidly acknowledges that both the material witnesses have not supported the case of the prosecution.

I have heard counsel for the parties and perused the records.

The prosecutrix eloped with the petitioner on 16th November, 2021 and she was recovered on the very next date. Her statement was recorded under Section 164 Cr.P.C, wherein, she admitted having gone with the petitioner with her on free will and without any coercion by the petitioner. She refused to undergo the medical examination. After her recovery, the material witnesses i.e. her mother who is examined as PW-1 and the victim herself who is examined as PW-2, both have not supported the case of the prosecution.

The trial of the case will take sufficient long time and no useful purpose will be served by keeping the petitioner in custody for such a long time. Without commenting anything on the merits of the case, this Court is convinced that the counsel for the petitioner succeeds in making out a case for grant of regular bail. Accordingly, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail/surety bonds to the satisfaction of the concerned trial Court/Duty Magistrate. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

(RAJESH BHARDWAJ)
JUDGE

05.04.2022
m.sharma

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