

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

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**CRM-M No. 427 of 2021
Date of decision : 29.4.2022**

Sukhdev

.....Petitioner

Vs.

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present : Mr. Rajesh Nain, Advocate, for the petitioner

Mr. Neeraj Poswal, AAG, Haryana

RAJESH BHARDWAJ, J. (Oral)

Instant petition has been filed under Section 439 Cr.P.C. praying for grant of regular bail to the petitioner in case FIR No.466, dated 29.4.2019, under Section 346 IPC (Sections 346 IPC deleted and Sections 376(3), 506 IPC and Section 4 of POCSO Act, 2012 were added later on), registered at Police Station Sadar Karnal, District Karnal.

The brief facts of the case are that the FIR was lodged by the father of the victim. It was alleged that his daughter i.e. victim (name concealed) was 16 years of age. On 28.4.2019 at about 10:00 a.m. she went away from her home without telling anyone and could not be found. Request was made to the police to trace out her. On the lodging of the FIR, the investigation commenced. Thereafter, the victim was recovered on 18.5.2019 by the Investigating Agency. Thereafter, she was produced before the Judicial Magistrate on 19.5.2019. Her medical was conducted and the samples were sent to the FSL. The petitioner was arrested on 24.5.2019. He approached the learned Fast Track, Special Court (POCSO), Karnal praying for grant of bail.

Learned Special Court after hearing, declined the same vide order dated

22.10.2020. Aggrieved by the same, the petitioner approached this Court by way of present petition.

Learned counsel for the petitioner has vehemently contended that the petitioner had been falsely implicated in this case. He submits that the petitioner is a young boy and is behind bars from the last 3 years. He submits that as per the case of the prosecution, the victim went away on her own, on 28.4.2019 and she was recovered on 18.5.2019 and was produced before the Judicial Magistrate for recording statement under Section 164 Cr.P.C. She submits in her statement that she had gone with Sukhdev i.e. the petitioner with her own wish. Now she wanted to go with her parents. The counsel submits that the petitioner has been implicated in this case for the reason being that the victim is less than 18 years. He never made any coercion or compulsion on the victim and thus, his implication in the case is totally illegal. He has submitted that in the last 3 years, the prosecution has examined only 2 witnesses. He submits that the prosecutrix has been summoned by the trial Court time and again, but till date she has not appeared before the trial Court for her deposition. He further submits that the trial Court has also issued bailable warrants for securing her presence, but despite that she has not made herself available before the trial Court. He submits that the conduct of the prosecutrix is only to prolong the trial so as to keep the petitioner behind bars. He submits that the petitioner has never been involved in any of the criminal cases earlier and hence, he does not have any criminal antecedents. He has submitted that in view of the facts and circumstances and the custody, the petitioner deserves to be enlarged on bail.

Learned State counsel has opposed the submissions made by

counsel for the petitioner. He submits that the victim in the case is minor and hence, her consent would have no legal sanctity. He submits that the parents of the victim have been examined and they have duly supported the case of the prosecution. He apprised the Court that the sample taken during the medical of the victim, were sent to the FSL and as per FSL report, no semen was detected.

Heard.

The petitioner is behind bars since 24.5.2019. The victim left the home without informing anyone on 28.4.2019 and was recovered on 18.5.2019. On recovery, her statement under Section 164 Cr.P.C. was recorded, wherein she deposed that she went on her own with the petitioner-Sukhdev. As per the record, despite number of opportunities granted, the prosecutrix till date has not appeared before the trial Court, despite the trial Court having issued the bailable warrants for securing her presence. The veracity of these allegations would be evaluated by the trial Court only after the conclusion of the trial. However, this Court would refrain itself from commenting on the merits of the case. However, keeping in view the long custody of the petitioner and the attending facts and circumstances, this Court finds that the counsel for the petitioner succeeds in making out the case for grant of regular bail to the petitioner. Accordingly, the present petition is allowed and the petitioner is ordered to be released on bail to the satisfaction of the concerned trial Court/Duty Magistrate.

(RAJESH BHARDWAJ)
JUDGE

29.4.2022

Ashwani

Speaking/Reasoned	:	Yes/No
Reportable	:	Yes/No