

CRM-M-722-2022

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

(217)

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Date of Decision:-18.04.2022.

Vijender Kumar

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Ms. Poorva Gupta, Advocate for
Mr. Akshit Aggarwal, Advocate for the petitioner.

Mr. B.S. Virk, DAG, Haryana.

RAJESH BHARDWAJ, J. (Oral)

Prayer in the present petition is for grant of regular bail to the petitioner in case FIR No.9 dated 10.01.2021 under Sections 363, 365 (deleted later on), 366-A, 506 IPC and Sections 376 (2) (N) IPC (added later on) along with Section 6 of the POCSO Act, 2012 (added later on), registered at Police Station Gandhi Nagar, District Yamuna Nagar at Jagadhri.

As per the facts, the present FIR was lodged by the father of the victim, namely, Dharambir. It was alleged that his daughter-victim (name concealed) who was 17 years went missing from the house on 09.01.2021 at 08.00 p.m. Despite their best efforts they failed to trace her out. The request was made to trace out his missing daughter. On the

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commencement of the investigation, victim was recovered on 02.02.2021. She was produced before the Judicial Magistrate Ist Class, Yamuna Nagar on 02.02.2021 itself. She refused to accompany her parents. She deposed in her statement recorded under Section 164 Cr.P.C. that she was tensed from home. Her mother used to beat her and at some times, her father also used to beat her. Hence, without informing anyone, she went at her own. She deposed that nobody has done any wrong act with her and she was alright. She further deposed that she did not want to go to her home. Thereafter, after a gap of 15 days again, the victim was produced before the Judicial Magistrate Ist Class, Yamuna Nagar on 17.02.2021, wherein in her statement she leveled allegations against the petitioner and deposed that on the pretext of marriage, petitioner Vijender Kumar forcibly took her to Saharanpur and thereafter, he handed her over to his friend. Thereafter, petitioner Vijender Kumar took her to Delhi. They stayed at Delhi for 25 days and there petitioner-Vijender Kumar did illicit act with her without her consent. Petitioner's friend also did illicit act with her and she was threatened to be killed in case she disclosed anyone about the same. From Delhi, petitioner's brother, whose name is Vijay, left her at Saharanpur. The petitioner was arrested on 31.07.2021. He approached the Court of learned Additional Sessions Judge (Fast Track Special Court under the POCSO Act, 2012), Yamuna Nagar at Jagadhri, praying for grant of bail. After hearing learned counsel for the parties, the learned Additional Sessions Judge declined the same vide its order dated 29.10.2021. Aggrieved by the same, the petitioner approached this Court by way of filing the present petition.

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Learned counsel for the petitioner has submitted that the petitioner has been falsely implicated in this case. She submits that the prosecutrix though less than 18 years of age, however, the petitioner who is 50 years of age has never been involved in any of the like offences on earlier occasion. She has submitted that the prosecutrix went missing of her own on 09.01.2021 and thereafter, she was recovered from Saharanpur on 02.02.2021. On her recovery, her first statement under Section 164 Cr.P.C. was recorded, wherein she deposed that she went from home of her own will as her parents used to beat her. She further deposed that no one was responsible for the same and no wrong act was done with her and she refused to go to her parent's home. The prosecutrix refused to undergo the medical test. After her statement, she was left in the Balkunj Chhachhroli. She was again produced before the Magistrate on 17.02.2021 and for the first time, under the pressure of the parents, she gave a tutored version and implicated the petitioner for the alleged offence. The counsel for the petitioner submits that at the initial occasion, the prosecutrix flatly refused to undergo medical test but thereafter her medical test was conducted for which the petitioner cannot be held liable as the delay in itself is self-speaking. It is submitted that the learned trial Court has examined in all 13 witnesses, though the prosecutrix has now supported the case of the prosecution, however, the same suffers from material contradictions. It is submitted that the fact that the petitioner, stayed for 25 days in Delhi and had been travelling by public transport and remaining in public places and at no occasion, there was any type of resistance, itself shows that the petitioner has been falsely implicated in this case.

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Learned State counsel, on the other hand, has opposed the contention of learned counsel for the petitioner. He submits that the prosecutrix is less than 18 years of age and if there is a consent on the part of the prosecutrix, the same has no legal sanctity. He however, submits that out of 23 prosecution witnesses 13 witnesses including all the material witnesses stand examined.

Heard.

The prosecutrix though less than 18 years of age, however, she went missing from home on 09.01.2021 on her own and on her recovery, her first statement under Section 164 Cr.P.C. was recorded wherein she implicated no one and rather deposed that she was used to be beaten up by her parents and she left the home of her own and no wrongful act was committed upon her. She refused to undergo her medical test. Again her statement was recorded under Section 164 Cr.P.C., wherein for the first time the petitioner was implicated in this case. Thereafter, her medical was conducted. As per the submissions by the learned counsel for the State, all the material witnesses stand examined. There is nothing on record to show that the petitioner has earlier been involved in any of the such offences.

In the above facts and circumstances, as the material witnesses already stand examined, therefore there cannot be any projected apprehension on the part of the petitioner qua making any attempt in influencing the witnesses. The veracity of the allegations would be assessed only after the appreciation of the evidence by the learned trial Court. The trial of the case is likely to take sufficient time and no useful purpose will be served by keeping the petitioner in custody for such a long

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time. This Court finds that the learned counsel for the petitioner has succeeded in making out a 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 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

April 18, 2022.

sandeep

Whether speaking/reasoned:-

Yes/No

Whether Reportable:-

Yes/No