

CRM-M-1018 of 2022 (O&M)

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

CRM-M-1018 of 2022 (O&M)

Date of decision : 22.08.2022

Lakhan

.....Petitioner

VERSUS

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. P.K.Ganga, Advocate
for the petitioner.

Mr. Neeraj Poswal, AAG., Haryana.

RAJESH BHARDWAJ, J. (Oral)

This is a petition under Section 439 Cr. P.C. for grant of regular bail to the petitioner in case FIR No. 12 dated 07.01.2021, under Sections 363, 366-A IPC (Sections 328, 343, 376 (2) (n), 450 and 506 IPC and Section 6 of the POCSO Act added later on), registered at Police Station City Sirsa, District Sirsa.

Brief facts of the case are that a complaint was lodged before the police by Rakesh Kumar, father of the prosecutrix, wherein it was alleged that he has two daughters and one son. The prosecutrix whose name has been concealed, is of the age of 17 ½ years. On 03.01.2021, his daughter (victim) went out from home without informing anyone in the family. They tried their level best to trace her out but failed to trace her. It was suspected that some unknown person has allured her away on the pretext of marriage. Request was made for taking action against the accused persons. FIR was lodged and the investigation commenced. During the investigation, the victim was recovered

learned Magistrate and her statement under Section 164 Cr.P.C. was recorded. She was taken for medical examination. However, she refused for the same. The petitioner was arrested on 13.01.2021. He approached before the Court on 14.12.2021 praying for grant of the bail. After hearing learned counsel for the parties, learned Additional Sessions Judge; Fast Track Special Court, Sirsa, declined the same vide order dated 16.12.2021. Petitioner thereafter approached this Court praying for grant of regular bail.

Learned counsel for the petitioner has submitted that petitioner has been falsely implicated in this case. It is submitted that as per case of the prosecution, prosecutrix is about aged 17 ½ years of age and she went missing from home on 03.01.2021. She was recovered on 09.01.2021. He submits that after her return, statement of the prosecutrix under Section 164 Cr.P.C., was recorded, wherein she specifically deposed before the learned Judicial Magistrate that she left home on 04.01.2021 at about 5.30. p.m., in search of a job. She went to saloon and from there, she went to Hisar and then to Agroha Dham. Thereafter, she returned back. She further deposed that nothing wrong was done to her. She also deposed that she did not want to go to her home. Learned counsel for the petitioner however submits that thereafter, learned Magistrate gave her custody to her parents and it is on account of the same that she fell under the influence of her parents and subsequently changed her statement and while appearing before the learned trial Court, she deposed against the petitioner. Allegations regarding rape were also levelled only under the influence of her parents. He submits that allegations made by the prosecutrix are not even substantiated. He submits that even otherwise, once the material witnesses are already stand examined, the probability of the petitioner influencing the prosecution witnesses also

do not survive. He has submitted that the petitioner has no criminal antecedents and he is not facing any prosecution in any other criminal case. He further submitted that during the period of her absence from home, the prosecutrix remained close to her home town and travelled by the public transport. However, there was no resistance whatsoever on her part, which shows that the petitioner has no complicity in the alleged offence. It is thus submitted that the petitioner be granted the concession of regular bail.

Learned State counsel has opposed the submissions made by learned counsel for the petitioner and submits that the prosecutrix is below 18 years of age and being minor if her consent is presumed, the same would have no legal value. He has admitted that in the statement of prosecutrix under Section 164 Cr.P.C., the prosecution did not level any allegations against the petitioner before the learned trial Court. She has made allegations subsequently against the petitioner. He submits that as per the FSL report, semen was detected and however, the DNA report is still awaited.

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

As per the prosecution story the prosecutrix went missing from home on 03.01.2021 and later on recovered on 09.01.2021. As per statement of the prosecutrix under Section 164 Cr.P.C., she went from home in search of a job. She went to saloon and from there, she went to Hisar and then to Agroha Dham. Thereafter, she returned back on 09.01.2021. During this period, the prosecutrix deposed that nothing wrong had happened with her and deposed that she did not want to go to her home. However, both the prosecutrix and the complainant have been examined by the learned trial

petitioner. There is nothing on record showing that the petitioner has any criminal antecedents. The allegations and counter allegations would be verified by the learned trial Court only on the conclusion of the trial. The trial would take sufficiently long time in its conclusion.

In the totality of facts and circumstances and without making any observation on merits, present petition is allowed. Petitioner be enlarged on bail on his furnishing bail/surety bonds 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

22.08.2022
rekha sharma

Whether speaking/reasoned: *yes/no*
whether reportable: *yes/no*