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

CRM-M-3429-2022

Date of decision: 7.4.2022

Nitin Kumar

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Diwan S. Adlakha, Advocate, for the petitioner.

Mr. Neeraj Poswal, Assistant Advocate General, Haryana.

RAJESH BHARDWAJ, J. (Oral)

Prayer in the present petition is for the grant of regular bail to the petitioner in a case FIR No.751 dated 11.9.2021, registered under Section 363, 366, 376(2)(n), 376(3), 420, 465, 468, 471 IPC; Section 6 of Protection of Children from Sexual Offences Act, 2012 and Section 9 of Prohibition of Child Marriage Act, 2006, at Police Station City Yamuna Nagar, District Yamuna Nagar.

As per the factual matrix of the case, the present FIR was lodged by the mother of the victim. It was alleged that she is resident of near Shamshan Ghat, Khadda Colony, Old Hamida. She is mother of seven children i.e. five daughters and two sons. Her daughter i.e. the victim aged 13 years was found missing on 13.8.2021 at about 9/10:00 pm. Despite their best efforts, they failed to trace her. It was suspected that her victim daughter was enticed by the petitioner Nitin Kumar on pretext of marriage. The FIR was lodged on 11.9.2021. On the commencement of the investigation, the petitioner was

arrested on 4.10.2021. He approached the learned Additional Sessions Judge (Fast Track Special Court under POCSO Act), Yamuna Nagar at Jagadhri praying for the grant of bail, who after hearing the parties, declined the same vide its order dated 14.12.2021. Aggrieved by the same, the petitioner has approached this Court by way of filing the present petition for grant of bail.

It has been contended by learned counsel for the petitioner that the petitioner is a young boy and has been falsely implicated in this FIR. He submits that the present FIR was lodged by the mother of the victim on 11.9.2021. He submits that as per the allegations, the victim eloped from the house on 13.8.2021; complaint was filed on 11.9.2021 and thereafter, it was the mother i.e. the author of the FIR, who produced her before the Police on 24.9.2021. He submits that after recovery of the victim, her statements under Section 161 Cr.P.C. and thereafter under Section 164 Cr.P.C. have been recorded and there was no allegation against the petitioner in the statements of the victim. He further submits that the victim is illiterate and there was no reliable proof of her age and thus, it was without any authenticated record that the complainant mentioned her age as 13 years. He submits that after recovery of the victim, the investigating agency made an effort to conduct her medical examination, however, the prosecutrix declined for the same. Thereafter, her ossification test was carried out and as per the ossification test, her age was assessed between 15 to 18 years. He has submitted that the statement of the victim under Section 164 Cr.P.C. was recorded by the JMIC, Yamuna Nagar on 24.9.2021, wherein specific question was put by the Court regarding her age and the answer given by her was that she is 21 years of age. The victim specifically deposed before the concerned court that on 13.8.2021 she went from her house to Fatehpur with Nitin without informing anyone. She further

deposed that she solemnized marriage with Nitin with her own free will and she wanted to live with Nitin only. She deposed that she never wanted to go with her parents, as they wanted to solemnize her marriage with some other person and she was not happy with that proposal. Thereafter, after taking the cognizance of the case, the learned trial Court examined the victim as PW-1. The victim deposed before the trial Court that she is illiterate and therefore she did not know about her date of birth. She deposed that she solemnized marriage with her own will with Nitin, who was present in the Court and she was staying with him in his house only. She deposed that her parents were against her marriage with the accused as they wanted to solemnize her marriage with someone else. Learned counsel for the petitioner submits that the allegations pertaining to the forgery of documents etc. are totally false and frivolous in the light of the statement made by the victim herself. The case of the prosecution fall flat as it has not produced any reliable evidence regarding the age of the victim. He submits that the petitioner is behind bars since 4.10.2021 and the victim already stands examined. He further submits that till date the complainant i.e. the mother of the victim has not appeared before the trial Court just to prolong the trial and hence, the petitioner deserves the concession of bail.

Learned State counsel on instructions from ASI Lakhwinder has opposed the submissions made by learned counsel for the petitioner and stated that as per the allegations, the age of the prosecutrix mentioned as 13 years. He submits that even ossification test was conducted, wherein the age of the victim has been assessed between 15 to 18 years. He submits that regarding the forgery of the certificates etc., it was duly investigated and it was established that the petitioner has forged the documents. However, he candidly

acknowledges that the victim has been examined and she has not supported the case of the prosecution. He submits that in all there are 20 prosecution witnesses, out of which only the victim has been examined so far. He further submits that the complainant was earlier also summoned by the Court, however, she failed to appear before the Court and now summons have been issued for securing her presence. He submits that in view of the overall facts and circumstances, the petitioner does not deserve the concession of bail.

Heard.

The petitioner is behind bars since 4.10.2021. Though in the FIR the age of the victim was mentioned as 13 years, however, in the ossification test conducted, the same has been found to be 15 to 18 years. The victim eloped from the house on 13.8.2021 and thereafter she was produced by her mother on 24.9.2021 i.e. after about one month. The victim did not support the case of the prosecution neither while recording statement under Section 161 Cr.P.C. nor at the time of recording of statement under Section 164 Cr.P.C. Even at the time of examination before the trial Court, she has not supported the case of the prosecution and deposed that she is 21 years of age and performed marriage with the petitioner on her own. She also deposed that she is residing in the house of the accused itself. Though the State has disputed the arguments raised by learned counsel for the petitioner regarding the age, however, this Court would not go into the merits of the case as the controversy would be assessed only after conclusion of the trial and after appreciation of the evidence by the trial Court. In the overall facts and circumstances of the case, I am of the opinion that learned counsel for the petitioner has been able to make 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 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.

7.4.2022
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(RAJESH BHARDWAJ)
JUDGE

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