

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(107+217)

CRM-M-4463-2022(O&M)
Date of Decision: 23.11.2022

Harbans Singh

--Petitioner

Versus

State of Punjab

--Respondent

CORAM:- HON'BLE MR. JUSTICE RAJESH BHARDWAJ.

Present:- Mr. G.S. Brar, Advocate for the petitioner.

Mr. Karunesh Kaushal, A.A.G., Punjab.

RAJESH BHARDWAJ.J (Oral)

CRM-37968-2022

Application is allowed as prayed for.

Annexures P-3 to P-6 are taken on record.

Main Case

The present petition has been filed under Section 439 Cr.P.C seeking the benefit of regular bail to the petitioner in case FIR No.166 dated 21.9.2021 under sections 363, 366-A, 34 IPC, registered at Police Station, Kotbhai, District Sri Muktsar Sahib.

As per facts of the case, present FIR was lodged on the statement of the complainant Kulvir Singh, wherein it was alleged that his elder daughter was 17 years of age and studying in 10+1. On 20.9.2021 she went to the school to appear in the examination, however, she did not return. They started searching for her but could not trace her. On inquiry they came to know that one Sukhjit Singh son of Charanjit Singh had enticed her away on the pretext of marriage. It was also suspected that

Harbans Singh son of Jameet Singh i.e. the present petitioner and Sharanjit Kaur wife of Harbans Singh had also conspired with Sukhjit Singh in enticing away his minor daughter. A request was made to take legal action against the culprit.

On the basis of the complaint FIR was registered and investigation commenced. The prosecutrix was recovered and she was produced before the learned Magistrate and her statement under section 164 Cr.P.C was recorded. During investigation, petitioner was arrested on 18.10.2021. He approached the court of learned Addl. Sessions Judge, Sri Muktsar Sahib for grant of bail, however, after hearing the parties, the same was declined vide order dated 11.1.2022. Aggrieved by the same petitioner has approached this court for grant of bail.

Learned counsel for the petitioner has vehemently contended that the petitioner has been falsely implicated in the present case. He submits that both Sukhjit Singh and prosecutrix were in a consensual relationship and hence both of them eloped together. He submits that on the recovery of the prosecutrix her statements under section 161 Cr.P.C and 164 Cr.P.C were recorded on 4.3.2022. In both these statements she deposed that she was interested in getting married with Sukhjit Singh and hence she boarded the train with Sukhjit Singh and went to Hazur Sahib and they stayed there for 3 days. Thereafter, they went to U.P. It was further deposed that due to her minor age she neither got married with Sukhjit Singh nor made any physical relations with him. She also deposed that she went with Sukhjit Singh with her own free will. Counsel submits that as the petitioner is brother-in-law of the main accused Sukhjit Singh, he has been

falsely implicated in this case. He submits that petitioner has no criminal antecedents and hence he deserves to be granted the benefit of bail. To substantiate his arguments counsel has relied upon a judgement passed by this court in case of *Lakhan Vs. State of Haryana 2022(3) Law Herald (P&H) 2332*.

On the other hand, learned State counsel submits that there are specific allegations against the petitioner. He submits that even if it is presumed that Sukhjit Singh, brother-in-law of the petitioner and prosecutrix were in consensual relationship, the same has no legal sanctity in the eyes of law as the prosecutrix was minor and her consent would be immaterial. He submits that though the prosecutrix in her statement under section 164 Cr.P.C has deposed that she went with Sukhjit Singh with her own free will, however in her examination-in-chief before the learned Trial Court she has supported the case of the prosecution and deposed regarding the complicity of the petitioner. He submits that cross-examination of the prosecutrix still remains to be recorded. He submits that during investigation it was found that the petitioner had duly supported his brother-in-law Sukhjit Singh in kidnapping the prosecutrix and he dropped the prosecutrix at bus stand on 20.9.2021 from where his brother-in-law Sukhjit Singh took her along with him. State counsel submits that granting bail to the petitioner at this stage would prejudice the on going trial as there are every chances that petitioner may influence the prosecutrix.

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

Admittedly, prosecutrix was minor at the time of occurrence. She eloped with the brother-in-law of the petitioner on 20.9.2021. After her recovery she was produced before the Magistrate concerned for recording her statement under section 164 Cr.P.C, wherein she deposed that she went with Sukhjit Singh with her own free will, however, in her examination-in-chief before the learned Trial Court she has supported the case of the prosecution and her cross-examination is yet to be recorded. The complicity of the petitioner has been alleged by the prosecutrix. The co-accused Sukhjit Singh is also behind bars. The alleged consent of prosecutrix being a minor cannot be taken into consideration at this stage.

This court would refrain itself from commenting on the merits of the case, as the allegations and counter allegations would be assessed only after evaluation of the complete evidence to be led by both the sides before the Trial Court. However, keeping in view the overall facts and circumstances of the case, this court is of the opinion that no case is made out for granting bail to the petitioner at this stage. The petition being devoid of any merit is hereby dismissed.

(RAJESH BHARDWAJ)
JUDGE

23.11.2022

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