

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

CRM-M-5047-2022

Date of decision : 25.08.2022

Akash

....Petitioner

versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Parveen Kaushik, Advocate
for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

RAJESH BHARDWAJ, J. (Oral)

Prayer in this petition is for grant of regular bail to the petitioner in case FIR No.0224 dated 01.09.2021, under Sections 366, 363 of the Indian Penal Code, 1860, Section 4 of the protection of Children from Sexual Offence Act, 2012, registered at Police Station Line Paar Bahadurgarh, District Jhajjar.

It is adumbrated facts of the case are that the complaint was lodged by father of the victim namely (Suresh Kumar). It was alleged that his daughter (victim) whose date of birth is 07.01.2005 is of 16 years of age. On 01.09.2021 at his about 8:30 am she went to the school but did not return. They tried to search her, however, failed to trace her out. It was doubted that someone has kidnapped his daughter. Request was made to take legal action against the culprit. On the basis of the complaint, FIR was lodged and the investigation commenced. During investigation the prosecutrix and the petitioner were recovered on 26.09.2021 by Mumbai Police. The prosecutrix was medically examined and was produced before the Judicial Magistrate on 28.09.2021 for recording her statement under Section 164 Cr.P.C. The petitioner was arrested on 04.10.2021. He approached the Court of Learned

Additional Sessions Judge, Jhajjar (Exclusive Court) praying for grant of bail, however, after hearing learned counsel for the parties, learned Additional Sessions Judge, Jhajjar declined the same vide his order dated 07.01.2022. Aggrieved by the same petitioner is before this Court praying for grant for regular bail.

Learned counsel for the petitioner has vehemently contended that the petitioner is young boy of 21 years of age. He has submitted that as per the allegations in the FIR the prosecutrix went missing on 01.09.2021 and was recovered on 26.09.2021 by the Mumbai Police. He submits that during this period as per the prosecutrix's statement, the prosecutrix and the petitioner went to Surat and from there they went to Mumbai. He submits that both of them remained at Surat for about 23 days. He submits that during this period they throughout remained in public places and travelled by public conveyance thus, there is no evidence whatsoever that the prosecutrix has any type of resistance. He submits that it would show that the petitioner and the prosecutrix were in a consensual relationship and there was no coercion whatsoever on the part of the petitioner. He submits that the prosecutrix has been examined by the trial Court as PW-1. He submits that the prosecutrix during her cross-examination has deposed that she knew Akash from last one year. She further deposed that he took her to Surat by bus and she did not raise any hue and cry while going in the bus. She further deposed that he took her from Gujarat to Bandra in Mumbai on 25.09.2021. She deposed that they remained at Surat for 23 days and after reaching Mumbai they were arrested by the Mumbai Police. He has submitted that the petitioner is at the threshold of his life and has no criminal antecedents. He submits that as the prosecutrix is less than 18 years of age, it is only because of the same reason that the petitioner has been booked in a heinous offence. He submits that even otherwise when the material

witnesses complainant and the prosecutrix already stand examined there is no probability that petitioner can influence the prosecution witnesses. He submits that from the overall facts and circumstances the petitioner deserves to be granted regular bail.

Learned State counsel on the other hand had submitted that the prosecutrix is less than 18 years of age and even if she has consented the same has no legal sanctity. However, he candidly acknowledges that the prosecutrix went missing on 01.09.2021 and was recovered by the Mumbai Police on 26.09.2021. He also submits that as per the official record the petitioner does not have any criminal antecedents. He has submitted that out of 19 prosecution witnesses 05 witnesses already stand examined including the prosecutrix and the complainant. He has submitted that the case of the prosecutrix is also medically corroborated.

I have heard learned counsel for the parties and perused the record.

Evidently, the prosecutrix went missing on 01.09.2021 and was recovered by the Mumbai Police on 26.09.2021. During this period both the petitioner and the prosecutrix have been staying in the public places and were travelling by public conveyance. There is nothing on record to show that there was any resistance shown by the prosecutrix. As per the statements before this Court all the material witnesses i.e. Complainant and the prosecutrix already stand examined and, thus, there is no probability that the petitioner can influence the prosecution witnesses. There is nothing on record to show that the petitioner has any criminal antecedents. The trial of the case will take sufficient long time and no useful purpose will be served by keeping the petitioner in custody for such a long time.

Veracity of the allegation would be finally assessed by the trial Court on the conclusion of the trial Court would refrain from commenting on the merits of the case. However, keeping in view overall facts and circumstances of the case the Court finds that counsel for the petitioner succeeds in making out a case for grant of regular bail. 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

25.08.2022
priyanka

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