

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

CRM-M-6942-2021

Date of decision : 25.04.2022

Kulwant Singh

.....Petitioner

versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Naresh Kumar, Advocate
for the petitioner.

Mr. Rakeshinder Singh Sidhu, AAG, Punjab.

RAJESH BHARDWAJ, J. (Oral)

Prayer in the present petition is for grant of regular bail to the petitioner in case FIR No.154 dated 25.09.2020, under Sections 363, 366 IPC (Sections 343, 376 IPC added later on) and Sections 4 & 6 of POCSO Act, 2012, registered at Police Station Bullowal, District Hoshiarpur.

As per the factual matrix of the case, the present FIR has been lodged on the statement of the complainant who is the mother of the victim. The sum and substance of the allegations made in the FIR are that the complainant is mother of three daughters. Her youngest daughter i.e. the victim was born on 18.01.2003 and she left studies after 9th standard. On 16.09.2020, they went to sleep after having their meal. When they woke up at about 04:00 AM, they found the victim not present in the bed. The complainant and her husband tried their best to search their missing daughter, however, failed to trace her. During search, they came to know that Kulwant Singh son of Amar Singh has kidnapped their daughter. The FIR was lodged to take the legal action against the culprits. On the commencement of the investigation, the prosecutrix was recovered from the company of the petitioner on 26.09.2020. Her statement under Section 164

Cr.P.C. was recorded by the Magistrate on 27.09.2020. The petitioner was arrested on 26.09.2020. Thereafter, he approached the Court of learned Additional Sessions Judge, Hoshiarpur praying for grant of bail, however, after hearing counsel for the parties, learned Additional Sessions Judge, declined the same vide order dated 13.01.2021. Aggrieved by the same, the petitioner has approached this Court for grant of regular bail by way of the present petition.

Learned counsel for the petitioner has contended that the petitioner has been falsely implicated in this case. He submits that petitioner is a young boy of 23 years of age and the prosecutrix happens to be 17 years of age i.e. less than 18 years and hence, the petitioner has been implicated in this case. He submits that the allegations in the FIR are that the petitioner helped his friend i.e. co-accused Prabhjot @ Navjot Sharma with whom the victim had the relationship. He has submitted that the petitioner has never been involved in any of the criminal case on earlier occasion and hence, he has an impeccable record. To buttress his arguments, he has further submitted that false implication of the petitioner is writ large from the very fact that both the victim and her mother i.e. the complainant have been examined by the trial Court as PW-1 and PW-2 respectively. In their examination, both of them have not supported the case of the prosecution and hence, on the request of learned Public Prosecutor, they have been declared hostile by the trial Court. He has placed on record the copy of their depositions before the trial Court. A reading of the same would reveal that the prosecutrix while appearing as PW-1 has deposed before the Court that Kulwant Singh did not make any call to her. She further deposed that neither he kidnapped her nor he committed any rape with her. She deposed on the similar lines regarding the co-accused Prabhjot Singh @ Navjot Sharma. The

complainant who is none other than the mother of the prosecutrix deposed that she never came to know that accused Kulwant Singh had enticed the prosecutrix on pretext of marriage. She deposed that the person who had been shown to her in the Court through video conferencing was not the person who enticed away her daughter i.e the victim on pretext of marriage. She further deposed that she had seen him for the first time in the Court on that day and he did not play any role in enticing away her daughter-victim on pretext of marriage. He submits that as the material witnesses have not supported the case of the prosecution, the incarceration of the petitioner is no more warranted and he deserves to be enlarged on bail.

Learned State counsel has opposed the submissions made by counsel for the petitioner. He submits that the victim is less than 18 years of age and thus, being minor her consent if at all is there, would have no legal sanctity. He has submitted that the victim was recovered from the company of the petitioner after having been enticed away by him. He has submitted that after recovery on 26.09.2021, she was produced before the learned magistrate for recording statement under Section 164 Cr.P.C. wherein she supported the case of the prosecution. However, he candidly acknowledges that the prosecutrix and the complainant have not supported the case of the prosecution before the trial Court. He further submitted before the Court that out of total 25 prosecution witnesses, 14 prosecution witnesses including the victim and the complainant have been examined.

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

Apparently, the victim eloped from her home on an intervening night of 16/17.09.2020. Thereafter, she was recovered on 26.09.2020 from the company of the petitioner. The FIR in question was lodged by her mother. The allegations against the petitioner were that of helping the co-

accused Prabhjot @ Navjot Sharma. During examination by the trial Court, both the victim and the complainant have not supported the case of the prosecution and have denied all the allegations made in the FIR and that made in the statement under Section 164 Cr.P.C. Out of 25 prosecution witnesses, 14 witnesses have been examined including the material witnesses i.e. the victim and the complainant. There is nothing on record to show that petitioner is also involved in any other case.

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. The veracity of the allegations would be assessed only by the trial Court on the conclusion of the trial. This Court would refrain itself from commenting anything on the merits of the case, However, in the overall facts and circumstances of the case, this Court is convinced that the 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.

25.04.2022
m. sharma

(RAJESH BHARDWAJ)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No