

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(216)

CRM-M-9602-2021
Date of Decision: 17.08.2022

Sadam Ali Hussain

--Petitioner

Versus

State of Punjab

--Respondent

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

Present:- Mr. Ravi Malhotra, Advocate for the petitioner.

Mr. A.S. Dhaliwal, D.A.G., Punjab.

RAJESH BHARDWAJ.J (Oral)

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.197 dated 12.8.2019 under sections 363, 366-A and 376(2) I.P.C (later on amended under sections 363, 366, 376(3) IPC and section 6 of POCSO Act), registered at Police Station, Division No.6, District Ludhiana.

As per factual matrix, a complaint was lodged by the father of the victim, wherein it was alleged that he was doing the labour work and had six children. His elder daughter i.e. the victim (name concealed) was about 15 years old. On 10.8.2019 at about 9 PM she went out of the house but did not return. They made best of the efforts to trace her, however, failed to do so. Later on, they came to know that their daughter had been enticed away by Sadam Ali i.e. the present petitioner on the pretext of marriage.

On the basis of the complaint present FIR was lodged and investigation commenced. During the investigation victim was recovered

from the custody of the petitioner on 27.8.2019. Her statement under section 164 Cr.P.C was recorded by the concerned Magistrate on 28.8.2019. She was medically examined. The petitioner was arrested on 27.8.2019. He approached learned Addl. Sessions Judge, Ludhiana for grant of bail, however, after hearing the parties, the same was declined vide order dated 15.6.2020. Aggrieved by the same petitioner has approached this court for grant of bail.

Learned counsel for the petitioner vehemently contends that petitioner has been falsely implicated in the present case by the family members of the victim. He submits that relationship between the petitioner and victim was not acceptable to her family members and hence under their pressure she deposed against the petitioner. He submits that both petitioner and victim stayed together for about 17 days at public places and they travelled by public transport, however, there was no resistance on the part of the victim which would indicate that there was no coercion by the petitioner. He submits that during her medical examination, vaginal swabs and blood samples of the victim were taken and sent for examination to the FSL. However, on receipt of the report of FSL it was opined that no human semen was detected on the vaginal swabs of victim. Counsel submits that petitioner has no criminal antecedents. He is a young boy doing the labour work and is behind bars for the last about three years and thus he deserves to be granted bail. It is also submitted that learned Trial Court has issued summons on number of occasions to secure the presence of the complainant and the victim, however, till date both have not appeared for their examination only in order to prolong the incarceration of the petitioner. He

submits that false implication of the petitioner is evident from the modus operandi adopted by the complainant and victim. Counsel further submits that petitioner has every right for a speedy trial but the same is being thwarted by the prosecution by not examining the material witnesses. He submits that in view of the attending circumstances, petitioner deserves to be granted bail.

On the other hand, learned State counsel submits that victim is a minor and even if she was a consenting party, her consent has no legal sanctity in the eyes of law. He submits that victim has made specific allegations against the petitioner in her statement recorded under section 164 Cr.P.C. However, he candidly acknowledges that both complainant and victim have so far remained absent before the Trial Court and hence they could not be examined by the Trial Court. It is submitted that out of the total 15 prosecution witnesses 6 have already been examined. He submits that as per the information provided to him petitioner has no criminal antecedents.

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

Admittedly the victim went missing from her home on 10.8.2019 and thereafter she was recovered from the custody of the petitioner on 27.8.2019. During this period they stayed together at public places, however, there was no resistance on the part of the victim during this period. As per report of the FSL no human semen was detected on the vaginal swabs of victim. Besides this, petitioner has no criminal antecedents. He is behind bars for the last about 3 years and despite

summons having been issued by the Trial Court a number of times, both the complainant and victim are not appearing for their examination. Undoubtedly, speedy trial is the right of every accused. This court is of the opinion that the petitioner has undergone a sufficient period of incarceration. The veracity of the allegations levelled against the petitioner would be assessed by the Trial Court only upon conclusion of the trial. 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 led by both the sides before the Trial Court. 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

17.08.2022

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