

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(104+219)

CRM-M-7392-2022(O&M)
Date of Decision: 12.09.2022

Kishan

--Petitioner

Versus

State of Punjab

--Respondent

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

Present:- Mr. Sandeep Verma, Advocate for the petitioner.

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

Mr. G.S. Dhillon, Advocate for the complainant.

RAJESH BHARDWAJ.J (Oral)

CRM-33269-2022

Application is allowed as prayed for.

Annexures P-5 and 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.92 dated 19.7.2021 under sections 366-A, 363, 376 IPC and section 6 of POCSO Act, registered at Police Station, Sadar Rajpura, district Patiala.

As per factual matrix, the FIR in question was lodged by the father of the prosecutrix namely Amarjit Sahni, wherein it was alleged that age of his daughter i.e. the prosecutrix was 17 years 11 months and 1 day. She was studying in 10+2 in Guru Ram Dass Public School, Basantpura. On 16.7.2021 she went to the bathroom and thereafter did not return. They tried to search her, however, failed to trace her out. On inquiry they came

to know that one Kishan resident of village Daria Kiratpur, district Vaishali (Bihar) has allured his daughter in order to marry her. A request was made to take legal action against the culprit.

The investigation commenced. During investigation, on secret information received by the investigating agency, the prosecutrix was recovered by police on 22.7.2021 from Pune (Maharashtra). At that time she was with the petitioner, however, petitioner escaped from the spot. The prosecutrix was produced before the learned Judicial Magistrate and her statement under section 164 Cr.P.C was recorded. The prosecutrix refused to undergo medical examination and therefore her medical examination could not be conducted. Petitioner was arrested on 14.11.2021. He approached the court of Addl. Sessions Judge-cum Fast Track Special Court, Patiala for grant of bail, however, after hearing the parties, the same was declined vide order dated 27.1.2022. Aggrieved by the same petitioner has approached this court for grant of bail.

Learned counsel for the petitioner vehemently contends that the petitioner has been falsely implicated in the present case. He submits that both prosecutrix and petitioner were of the age of majority and they were in consensual relationship. He submits that there was no coercion on the part of the petitioner in enticing her away. It is submitted that as their relationship was not acceptable to the family members of the prosecutrix, hence, the present FIR was lodged on the basis of false and frivolous allegations. He submits that both petitioner and prosecutrix left their home together and thereafter they lived together for about five days and prosecutrix was recovered from the Railway Station at Pune. It is submitted

that even in her statement recorded under section 164 Cr.P.C prosecutrix deposed that she left her home of her own free will and she wanted to marry with petitioner/accused. She also deposed that investigating agency wanted to conduct her medical examination, however, she refused to undergo the same. To buttress his arguments, counsel submits that even during the course of trial the prosecutrix and her father, who is the author of the present FIR, have been examined as PW-1 and PW-2 respectively and both have not supported the case of prosecution and hence were declared hostile. Counsel submits that case of the prosecution has fallen flat and hence further incarceration of the petitioner is not warranted. He submits that petitioner is a young boy at the threshold of his life. Counsel submits that petitioner has no criminal antecedents and he deserves to be granted the benefit of bail.

Learned counsel for the complainant has endorsed the submissions made by counsel for petitioner and submits that both the families have decided to marry the prosecutrix and petitioner as and when they would attain the marriageable age.

On the other hand, learned State counsel submits that there are specific allegations against the petitioner. He submits that even if it is assumed that the prosecutrix was a consenting party, still her consent has no legal sanctity as she was a minor at the time of occurrence. He candidly admits that prosecutrix and her father have been examined by the Trial Court and they have not supported the case of prosecution and thus were declared hostile. It is submitted that out of total 23 prosecution witnesses, 4 have been examined. He further submits that as per information provided

to him petitioner is not involved in any other case.

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

Admittedly, both petitioner and the prosecutrix went missing from their home on 16.7.2021 and thereafter the prosecutrix was recovered from Pune. In her statement recorded under section 164 Cr.P.C the prosecutrix deposed that she was in consensual relationship with the petitioner and she wanted to marry him. The prosecutrix and her father have been examined before the learned Trial Court and they have not supported the case of prosecution. There is nothing on record to show that petitioner has any criminal antecedents. 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 to be 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 the 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

12.09.2022

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