

CRM-M-9105-2022

Date of decision: 01.04.2022

ISHER SINGH

...PETITIONER

VERSUS

STATE OF PUNJAB

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present: Mr. Tejinder Pal Singh, Advocate
for the petitioner.

Mr. A.A.Pathak, Addl. AG, Punjab.

Mr. Amit Dhawan, Advocate
for the complainant.

VIVEK PURI, J. (ORAL)

Short reply by way of affidavit of Achhru Ram Sharma, PPS, Deputy Superintendent of Police, Sub-Division Phagwara, District Kapurthala on behalf of the respondent-State has been filed and the same is taken on record.

Petitioner is seeking anticipatory bail in case bearing FIR No. 05 dated 05.01.2022 under Sections 363/366-A IPC (offence under Section 328/376 IPC & Section 4 of POCSO Act added subsequently), registered at Police Station City Phagwara, District Kapurthala.

Briefly, the case has been registered on the basis of the statement of an uncle of the victim who is aged about 17 years alleging that on 02.01.2022, she went missing from the house, it was suspected that the petitioner has allured the victim and taken her somewhere.

Learned counsel for the petitioner contends that at the first instance, the statement of the victim under Section 161 Cr.P.C has been recorded wherein she has not imputed any allegation against the petitioner either with regard to kidnapping or commission of any sexual assault. She had even refused to get

herself medico legally examined. However, in the subsequent statement recorded under Section 164 Cr.P.C, the allegations have been imputed against the petitioner but she is not specific as to whether any physical relations were developed by the petitioner or not. There is contradictory statement of the victim and in such circumstances, the petitioner becomes entitled to the concession of pre-arrest bail.

On the contrary, bail has been opposed by the learned State counsel and counsel appearing on behalf of the complainant. It has been argued that there is categoric and specific allegations levelled against the petitioner in the statement under Section 164 Cr.P.C and thereafter, she was also got medico legally examined on 22.02.2022. Consequently, the offence under Sections 328/376 IPC and 4 POCSO Act were invoked in the instant case.

Although, in the statement under Section 161 Cr.P.C which was recorded on 13.01.2022, the victim has not levelled any allegation against the petitioner but significantly, her statement under Section 164 Cr.P.C was recorded on 14.01.2022 by the learned Sub-Divisional Judicial Magistrate, Phagwara. In the said statement, it is emerging that she had left the house on the asking of the petitioner, she was also made to consume some poisonous/intoxicant substance and was taken to a hotel in Shimla. Although, she has not specifically stated that as to whether the petitioner had developed physical relations or not but it is also emerging in the statement that she remained under the influence of the intoxicants and had suspicion that he might have developed physical relations with her.

The victim was also medico legally examined on 17.01.2022 and the learned counsel for the complainant has categorically stated that the opinion with regard to the possibility of sexual intercourse has been mentioned therein. It is

allegations levelled against the petitioner in the statement under Section 164 Cr.P.C. It will be too early to discard the version as putforth in the statement under Section 164 Cr.P.C on the score that on previous date she had not imputed any allegation against the petitioner in the statement under Section 161 Cr.P.C. The matter requires thorough probe and investigation, the prosecutrix remained away from the house for a period of two weeks and custodial interrogation of the petitioner appears to be essential. As such, no exceptional circumstances are made out to extend the concession of anticipatory bail to the petitioner.

In view of the above, the present petition is dismissed.

01.04.2022
renubala

(VIVEK PURI)
JUDGE

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