

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(220)

CRM-M-10744-2022

Date of Decision: 17.03.2022

Vijay Kumar @ Abhi

--Petitioner

Versus

State of Punjab

--Respondent

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

Present:- Mr. M.S. Longia, Advocate for the petitioner.

Mr. Rakeshinder Singh Sidhu, A.A.G., Punjab.

RAJESH BHARDWAJ.J (Oral)

Matter has been taken up through video conferencing via Webex facility in the light of the Pandemic Covid-19 situation and as per instructions.

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.171 dated 25.9.2021 under sections 363, 366-A I.P.C (sections 376, 120-B IPC and sections 3 and 4 of POCSO Act were added later on) registered at Police Station, Sadar Nakodar, District Jalandhar.

As per factual matrix, the FIR in question was lodged by Kuldeep Kumar, who is the father of the victim. It was alleged that his daughter aged about 17 years went with his wife Kulwinder Kaur to village Shankar for taking medicine. From the village Shankar a boy namely Lavi took his minor daughter after alluring her. They searched for her, however, failed to find her. A request was made to take action against the culprits.

The investigation commenced and prosecutrix was recovered on 28.9.2021. The investigating agency produced her before the learned

Magistrate on 29.9.2021 for recording her statement under Section 164 Cr.PC. In the statement the name of the petitioner was mentioned by the prosecutrix and hence he was arrayed as the second accused in the present case. As a result he was arrested on 29.9.2021. He approached learned Addl. Sessions Judge, Fast Track Court, Jalandhar for grant of bail, however, after hearing the parties, the same was declined vide order dated 15.2.2021. 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 FIR. Counsel submits that from the bare perusal of the allegations in the FIR the petitioner is not even named in the FIR. He submits that after having been eloped on 21.9.2020 prosecutrix was recovered on 28.9.2021. It is on 29.9.2021 when her statement under Section 164 Cr.P.C was recorded, name of the petitioner was mentioned by her. It is also mentioned in the statement that when she called the petitioner on his phone and invited him to Himachal Pradesh, where she had gone, however, petitioner refused to go and thereafter the prosecutrix called the friend of the petitioner namely Lavi. It is submitted that the investigating agency in order to implicate the petitioner in this case incorporated the name of the petitioner under Section 120-B IPC. Counsel submits that false implication of the petitioner is further strengthened from the fact that after conclusion of the investigation the Trial Court examined the material witnesses i.e. the prosecutrix and her father, who is the author of the FIR as also her mother as PW-1, PW-2 and PW-3 respectively. It is submitted that all these material witnesses have not supported the case of the prosecution and they were declared hostile.

Counsel has appended the copies of their testimonies which would show that all these witnesses have emphatically declined the involvement of the petitioner in the alleged offence in the present case. Counsel submits that in the overall facts and circumstances of the case petitioner deserves to be enlarged on bail.

On the other hand, learned State counsel has submitted that the prosecutrix is a minor and there are allegations of involvement of the petitioner in conspiring with the co-accused Lavi, however, he candidly submits that the petitioner was not named in the FIR and the material witnesses have not supported the case of the prosecution.

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

Admittedly, petitioner is behind bars since 29.9.2021. It is apparent from the record that petitioner was not named in the FIR. On the other hand the material witnesses i.e. prosecutrix and her parents have not supported the case of the prosecution. The co-accused namely Lavi is also behind bars. Whether a case under Section 376 I.P.C is made out against the petitioner or not would be evaluated by the Trial Court after conclusion of the trial. 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

17.03.2022

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