

CRM-M-11945 of 2022 (O&M)

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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CRM-M-11945 of 2022 (O&M)
Date of decision:16.08.2022

Neeraj

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. G.S.Sandhu, Advocate
for the petitioner.

Mr. Amandeep Singh Gill, Sr. DAG, Punjab.

SUVIR SEHGAL, J. (Oral)

CRM No.10456 of 2022

Application is allowed as prayed for.

CRM-M-11945 of 2022

Instant petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 (for short “the Code”) for grant of regular bail to the petitioner in case FIR No.316 dated 09.12.2020 registered under Sections 363, 366-A, 376 of Indian Penal Code, 1860 and Section 4 of Protection of Children from Sexual Offences Act, 2012 (for short “the POCSO Act”), however, Sections 376 IPC and Section 4 of POCSO Act were added later on, at Police Station Haibowal, District Ludhiana (Annexure P-1).

Case of the prosecution is that FIR (Annexure P-1) has been registered on the statement of father of a 17 year old girl (for short “the

prosecutrix”) on the allegation that the prosecutrix is missing from her paternal home. He suspects that Neeraj (present petitioner) has enticed her on the pretext of performing marriage.

By referring to the testimony of the prosecutrix, who has been examined as PW5, counsel for the petitioner urges that she has not supported the case of prosecution and has categorically stated that accused-petitioner has neither abducted her nor sexually assaulted her. Counsel has made a further reference to the cross-examination of the prosecutrix to submit that her date of birth as per school record is 02.06.2001 and she was 19 years of age on the date of alleged enticement. Counsel asserts that the petitioner, who has a clean past and is in custody since 14.12.2020 deserves to be enlarged on bail.

Per contra, upon instructions from ASI Gurmail Singh, State counsel has opposed the petition by submitting that the prosecutrix, who is a minor, has supported the allegation of sexual assault in her statement recorded under Section 164 of the Code as well as in the narration of the incident given by her to the examining doctor. State counsel submits that besides the testimony of the complainant, medical evidence is also against the petitioner. As per his instructions, out of total 10 prosecution witnesses, 04 have been examined and 03 have been given up.

Having considered the submissions made by counsel for the parties, but without advertent to the merits or demerits of the arguments addressed, this Court is *prima facie* of the view that complicity of the petitioner in the offence as well as the age of the prosecutrix are questions

to be decided by the Trial Court. As the material prosecution witnesses have been examined and the trial is likely to take time to conclude, petition is allowed and petitioner is ordered to be released on bail on furnishing bail/surety bonds to the satisfaction of the Trial Court/Duty Magistrate concerned.

It is clarified that any observation made hereinabove shall not be construed to be an expression of opinion on the merits of the case.

August 16, 2022
savita

(SUVIR SEHGAL)
JUDGE

<i>Whether Speaking/Reasoned</i>	<i>Yes</i>
<i>Whether Reportable</i>	<i>Yes</i>