

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

(214)

CRM-M-17802-2022

Date of Decision: 06.05.2022

Kayia and others

--Petitioners

Versus

State of Punjab and another

--Respondents

CORAM:- HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present:- Mr. Raj Kumar Arya, Advocate
for the petitioners.

Mr. Rakeshinder Singh Sidhu, AAG, Punjab.

Ms. Sukhveer Kaur, Advocate
for the complainant/respondent No.2.

RAJESH BHARDWAJ.J

Prayer in this petition is for grant of regular bail to the petitioners in case FIR No.0174 dated 18.08.2020, registered under Sections 366-A, 376, 109 of Indian Penal Code and Section 4 of POCSO Act, 2012, registered at Police Station Mahilpur, District Hoshiarpur.

As per the facts of the case, the present FIR was lodged by Mugdu Din son of Hussain Ali. The sum and substance of the allegations are that the complainant had four daughters and two sons. His youngest daughter i.e. the victim (name concealed) was about 15 years of age. In the night of 15.08.2020, she was sleeping in the backyard of their house. When he woke up at 03:00 AM in the morning, he found the victim missing. They tried their level best to search her, however, failed. He suspected that his daughter i.e. victim had been enticed by Lallu son of Faqir, Shonki daughter of Lallu, Billa and Kayia sons of Faqir and Shamu son of Roshan with

intention to marry. The FIR was lodged to take the legal action against the culprits. The investigation commenced and the challan was presented against the accused Billa. The trial concluded *qua* co-accused Billa and on conclusion of the same, he was acquitted by the trial Court vide its order dated 22.12.2021. Thereafter, the petitioners surrendered on 06.04.2022. They approached the learned Additional Sessions Judge, Fast Track Special Court, Hoshiarpur praying for grant of grant of bail. After hearing, the learned Special Court, Hoshiarpur declined the same vide its order dated 11.04.2022. Aggrieved by the same, the petitioners are before this Court by way of present petition.

Learned counsel for the petitioners has vehemently contended that the petitioners have been falsely implicated in this case. The precise contention raised by learned counsel for the petitioners that the co-accused Billa had been arrested by the investigating agency after lodging of the FIR. The trial against him commenced and the prosecutrix having not supported the case of the prosecution, he was acquitted by the trial Court vide its order dated 22.12.2021. He further submits that the petitioners and the prosecutrix have settled the dispute amicably as they compromised the matter. He has submitted that as the evidence against the petitioners and the co-accused Billa who has been acquitted by the trial Court are virtually the same and hence, the prosecution of the petitioners is nothing but an abuse of the process of the Court and hence, they deserve to be granted bail.

On the other hand, learned State counsel has opposed the submissions made by counsel for the petitioners. It has been submitted that the co-accused was arrested and the trial commenced only *qua* the co-accused Billa. He submits that though the co-accused has been acquitted,

but the prosecutrix in this case was 15 years of age at the time of occurrence. He submits that the statement of the prosecutrix under Section 164 Cr.P.C. was recorded during the investigation and she categorically deposed against the petitioners. He submits that the petitioners cannot draw any benefit from the acquittal of the co-accused Billa who faced a thorough trial and thereafter, was acquitted. He submits that the complicity of the petitioners is writ large since beginning and they have been arrested on 06.04.2022 and their prosecution is at threshold. He has however, submitted that the compromise as alleged has no legal sanctity in the eyes of law. He contends that the petitioners have no case for grant of bail.

I have heard learned counsel for the parties and perused the records.

The prosecutrix was 15 years of age at the time of occurrence and thus, a minor. Her statement under Section 164 Cr.P.C. was recorded wherein, she duly supported the case of the prosecution. She was medically examined by the doctor which further strengthened the allegations made by her. The compromise as contended by the petitioners is meaningless in the eyes of law. The prosecutrix is minor. The presumption under Sections 29 and 30 of POCSO Act are duly attracted to the facts and circumstances of the case. The petitioners have been arrested on 06.04.2022 and thus, the trial against the petitioners is at threshold. Thus, in the overall facts and circumstances of the case, this Court is of the opinion that the arguments raised by counsel for the petitioners is without any merit and the same deserves to be declined.

Resultantly, the petition being devoid of any merits is hereby dismissed. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

06.05.2022
m.sharma

(RAJESH BHARDWAJ)
JUDGE

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