

**218 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-17708-2022

Date of Decision: 19.12.2022

Sukhbir Singh

..... Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Ramnish Puri, Advocate, for the petitioner.

Mr. Harpreet Singh, Addl. Advocate General, Punjab.

Rajesh Bhardwaj, J. (ORAL)

Prayer in the present petition is for the grant of regular bail to the petitioner in a case FIR No.248 dated 26.12.2020, registered under Sections 363, 366 IPC (Sections 376, 120-B, 201, 366-A, 370 IPC, Section 4 of POCSO Act and Sections 9, 10, 11 of the Prohibition of Child Marriage Act, 2006 added lateron) (charges framed under Sections 120-B, 363, 366-A IPC and Section 4 of POCSO Act with charge under Sections 376, 370 IPC and Sections 9, 10 of the Prohibition of Child Marriage Act, 2006 framed in the alternative), at Police Station Khilchian, District Amritsar.

Adumbrated facts of the case are that the complaint was lodged by father of the victim, wherein, it was alleged that his daughter, who was 16-17 years of age was 8th pass and was doing household work. On 25.11.2020, he went to his job and came back at home at around 6:00 pm. On his return, he found that his daughter i.e. the victim was not at home. He tried to search her at every possible place, but failed to trace her out. It was suspected that some unknown person by making false promise of marriage enticed her away. Request was made to search his daughter and to take legal

action against the culprits. On the basis of the complaint, a formal FIR was lodged and the investigation commenced. During the investigation, the victim was recovered on 26.12.2020 and she was medically examined. The victim was produced before the learned Magistrate for recording her statement under Section 164 Cr.P.C. The petitioner was arrested on 12.03.2021. He approached the Court of learned Addl. Sessions Judge, Fast Track Court, Amritsar for grant of bail, who, after hearing the parties, declined the same vide order dated 24.12.2021. Aggrieved by the same, the petitioner has approached this Court by way of filing the present petition for grant of bail.

It has been vehemently contended by learned counsel for the petitioner that the petitioner has been falsely and frivolously implicated in this case. He has submitted that the prosecutrix being less than 18 years of age, the petitioner has been implicated in this case. He submits that admittedly the prosecutrix went missing from home on 25.11.2020 and thereafter, she was recovered by the Investigating Agency on 26.12.2020 i.e. after about a month. He has submitted that during this period, the prosecutrix was moving from one place to another and travelling by public conveyance and there was nothing on the record to show that the prosecutrix was ever forced by the petitioner. To strengthen his arguments, he submits that the prosecution has examined the prosecutrix as PW-1 and her father as PW-2, who is the author of the FIR. However, both of these material witnesses have not supported the case of the prosecution and thus, were declared hostile. He submits that the prosecutrix levelled allegations against the other accused also, however, the challan was presented against the petitioner and co-accused Karamjit Kaur @ Madhu, whereas rest of the

accused were found innocent during the investigation. However, after the recording of the statement of the prosecutrix before the trial Court, the prosecution filed an application under Section 319 Cr.P.C. for summoning the rest of the accused, which was allowed and rest of the accused have also been summoned. He submits that now *de novo* trial would commence and the petitioner is already behind bars since 12.03.2021. He submits that the prosecutrix and her father have already not supported the case of the prosecution and they have been declared hostile qua the petitioner. He has submitted that the petitioner has no criminal antecedents and thus, he deserves to be granted bail.

On the other hand, learned State counsel has opposed the submissions made by learned counsel for the petitioner and has submitted that there are specific allegations against the petitioner. He has submitted that even if it is presumed that the prosecutrix was a consenting party, the same would have no legal sanctity. However, he candidly acknowledges that qua the petitioner, the prosecutrix and her father have been declared hostile as they did not support the case of the prosecution. He further submits that the out of total 22 prosecution witnesses, 5 witnesses have already been examined and now an application under Section 319 Cr.P.C. has been allowed, vide which 6 other accused persons have been summoned to face the trial alongwith the petitioner. He submits that as per the instructions provided to him, the petitioner has no criminal antecedents.

Heard.

Evidently, the petitioner is behind bars since 12.03.2021. The prosecutrix and her father have been examined as PW-1 and PW-2 and both have not supported the case of the prosecution. Now 6 other persons have

been summoned by the trial Court under Section 319 Cr.P.C. and the trial would begin *de novo*. There is nothing on record to show that the petitioner has any criminal antecedents. The veracity of the allegations would be evaluated by the trial Court only after appreciation of the complete evidence led by both the parties. This Court would refrain itself from commenting anything on the merits of the case, however, considering the prayer for grant of bail to the petitioner, I am of the view that learned counsel for the petitioner has been able to make out a case for grant of regular bail to the petitioner. The trial would take sufficiently long time for its conclusion.

Accordingly, the present petition is allowed and the petitioner is ordered to be released on bail to the satisfaction of the concerned trial Court/Duty Magistrate.

Nothing said herein shall be treated as an expression of opinion on the merits of the case.

19.12.2022

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Whether Speaking/Reasoned :
Whether Reportable :

(RAJESH BHARDWAJ)
JUDGE

Yes/No
Yes/No