

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

CRM-M-21730-2022

Date of decision : 24.05.2022

Avtar Singh @ Monu

.....Petitioner

versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Gursimran Singh Bawa, Advocate
for the petitioner.

Mr. Rakeshinder Singh Sidhu, AAG, Punjab.

RAJESH BHARDWAJ, J. (Oral)

Prayer in the present petition is for grant of regular bail to the petitioner in case FIR No.0172 dated 18.07.2021, under Sections 363, 366-A, 376 of IPC, 1860 and Section 4 of Protection of Children from Sexual Offences Act (Amended), 2012, registered at Police Station Sadar Amritsar, District Police Commissionerate Amritsar.

Adumbrated facts of the case are that the prosecutrix (name concealed) lodged the FIR. It was alleged that her date of birth is 24.08.2006 and she was studying in 7th standard at Government Elementary School, Naushara Kalan, Majitha Road, Amritsar. Avtar Singh @ Monu used to chase her on her way to school. On 14.07.2021 at about 05:00 PM she had gone to the market for purchasing some household items where Avtar Singh @ Monu enticed her away on the promise of the marriage. He took her to the house of his uncle namely Satnam Singh at Village Gaunsabad where he established physical relations with her against her will. She managed to escape from there and thus, lodged the present complaint with request to take the legal action

against the culprits. On lodging of the FIR, investigation commenced and statement of the witnesses were recorded. The prosecutrix was medically examined. The petitioner was arrested on 20.07.2021. He approached the Court of learned Additional Sessions Judge, Amritsar praying for grant of bail. After hearing counsel for both the sides, learned Additional Sessions Judge declined the same vide order dated 31.01.2022. Aggrieved by the same, petitioner has approached this Court praying for grant of regular bail.

Learned counsel for the peittioner has vehemently contended that the petitioner has been falsely implicated in this case. He submits that petitioner is a young boy and at the threshold of his life. Both the petitioner and the prosecutrix were in love with each other. He has submitted that from the allegations in the FIR, it is evident that the prosecutrix remained with the petitioner for about four days and throughout this period, they remained at different places and had been travelling by the public transport. However, there was no resistance by the prosecutrix to the same. He has submitted that after the recovery, the prosecutrix under pressure of her family members was compelled to lodge a false and frivolous FIR against the petitioner. He submits that even from the medical conducted, it was said that no definite information can be given and it was only mentioned that possibility of sexual intercourse could not be ruled out. He has submitted that petitioner has no criminal antecedents and he has never been involved in any other criminal offences. He submits that petitioner is behind bars since 20.07.2021. To buttress his arguments, he has submitted that the innocence of the petitioner is clear from the fact that both the prosecutrix and her mother

have been examined by the trial Court as PW-1 and PW-2 respectively. He submits that the prosecutrix submitted before the trial Court that the petitioner neither teased her nor chased her. She further submitted that he has never kidnapped her on the promise of marriage and thus, she was declared hostile. Similarly, her mother was examined as PW-2 also who also did not support the case of the prosecution and she was also declared hostile. He submits that both the material witnesses have not supported the case of the prosecution. The false implication of the petitioner is writ large. He submits that in view of the overwhelming facts and circumstances of the case, the petitioner deserves to be granted regular bail.

Learned State counsel, on the other hand, opposed the submissions made by counsel for the petitioner. He submits that the prosecutrix is a minor being less than 18 years of age and hence, even if she has consented then the same has no legal sanctity. He has submitted that as per the medical examination also, possibility of intercourse cannot be ruled out. However, the FSL report is awaited. He fairly submits that both the material witnesses i.e. PW-1 and PW-2 have not supported the case of the prosecution and declared hostile. He has submitted that out of 17 prosecution witnesses, both the material witnesses i.e. the prosecutrix and her mother have been examined so far.

I have heard counsel for the parties and perused the record.

Admittedly, the prosecutrix eloped with the petitioner on 14.07.2021 and thereafter, they went to the house of his uncle from where, they went to Dehradun. They stayed throughout at different places and travelled by the public transport. The prosecutrix was recovered on

18.07.2021. The prosecutrix and her mother both have been examined by the trial Court. They have totally resiled from their statements made earlier and hence, declared hostile. There is nothing on record showing that the petitioner has any criminal antecedents and even otherwise, the material witnesses also stand examined who did not support the case of the prosecution.

The trial of the case will take sufficient long time and no useful purpose will be served by keeping the petitioner in custody for such a long time. In the overall facts and circumstances of the case, this Court is convinced that the counsel for the petitioner succeeds in making out a case for grant of regular bail. Accordingly, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail/surety bonds 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.

(**RAJESH BHARDWAJ**)
JUDGE

24.05.2022
m. sharma

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