

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

CRM-M-26213-2021

Date of Decision: 20.7.2022

Krishan Kumar

..... Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Amit Choudhary, Advocate, for the petitioner.

Mr. Neeraj Poswal, Assistant Advocate General, Haryana.

Rajesh Bhardwaj, J. (ORAL)

Prayer in the present petition is for the grant of regular bail to the petitioner in a case FIR No.264 dated 26.10.2020, registered under Sections 363, 366, 406, 323, 344 IPC, at Police Station City Ratia, District Fatehabad.

As per factual matrix of the case, the FIR in question was lodged by the mother of the victim. The sum and substance of the allegations in the FIR is that she has four daughters and youngest daughter i.e. the victim was 16 years of age. On 25.10.2020 at about 3:00 pm, her victim daughter went for doing the work, but did not return till the evening. They searched everywhere, but failed in tracing her. On their search they suspected that her daughter had been allured by Krishan Kumar i.e. the petitioner. It was prayed in the complaint to lodge the FIR to take legal action against the culprit. On the basis of the complaint, the FIR was lodged and the investigation commenced. During the investigation, the victim was recovered after about two months on 14.12.2020. Thereafter, she was produced before the learned Magistrate and statement under Section 164 Cr.P.C. was recorded. The petitioner was arrested on 4.12.2020. The

petitioner approached the learned Additional Sessions Judge, Fatehabad for grant of bail, who after hearing the parties, declined the same vide its order dated 2.3.2021. Aggrieved by the same, the petitioner approached this Court by way of filing the present petition for grant of regular bail.

Learned State counsel has submitted that though in the headnote of the petition, Section 366 IPC is written, however, offence under Section 366-A IPC is there in the FIR. On the oral request of learned counsel for the petitioner, it is directed that Section 366 IPC be read as Section 366-A IPC in the petition as well as in the order.

Learned counsel for the petitioner vehemently contends that the petitioner has been falsely implicated in the present FIR. He has submitted that as per the allegations in the FIR, the victim eloped from her home on 25.10.2020 and she was recovered on 14.12.2020 after about two months and her statement under Section 164 Cr.P.C. was recorded, wherein, she has deposed that she remained with the petitioner during this whole period. She further deposed that she was taken by the petitioner to Ludhiana, where, the petitioner kept her in Geeta Colony for one month and thereafter, he kept her at Phagwara for another one month. She deposed that he has not done any wrongful act with her. Learned counsel for the petitioner submits that the victim has deposed that she was kept by the petitioner in public places and have completed two months, which shows that the petitioner and the prosecutrix had consensual relationship. He submits that the prosecutrix deposed that the petitioner has not committed any wrongful act with her and it is because of that the petitioner is not being prosecuted for any offence for sexual assault. Learned counsel for the petitioner has placed on record the zimini orders of the trial Court and has submitted that, to prolong the

incarceration of the petitioner, intentionally the trial is being delayed. He submits that on the examination-in-chief of the complainant, the complainant moved an application under Section 319 Cr.P.C. on 20.9.2021 and thereafter repeatedly adjournments are being taken for arguments on the said application. He has submitted that after repeated adjournments, now the case is fixed for the arguments on the application under Section 319 Cr.P.C. for 3.9.2022. He has submitted that virtually one year has passed but till date no arguments have been advanced by the complainant on the application filed and therefore, the prosecution witnesses have also not been examined. He has submitted that even from the reading of the allegations in the FIR, offence under Section 366-A IPC is not attracted, whereas, Section 363 IPC is bailable. He has submitted that the petitioner has no criminal antecedents and he is behind bars from about last 1½ years. He submits that keeping in view the overall facts and circumstances, the petitioner deserves to be granted bail.

However, learned State counsel has opposed the submissions made by learned counsel for the petitioner. On instructions from SI Shakuntala Devi, he has submitted that the prosecutrix was less than 18 years of age, thus a minor. He has submitted that the prosecutrix has specifically alleged about the complicity of the petitioner while recording her statement under Section 164 Cr.P.C. also and she deposed that she was compelled by the petitioner to remain in his custody for about two months. However, he candidly acknowledges that the application under Section 319 Cr.P.C. filed by the complainant is pending consideration for the last about one year.

Heard.

Admittedly, the petitioner is behind bars since 4.12.2020. The prosecutrix was recovered after about 2 months from the date of her disappearance. As per the case of the prosecution, both the petitioner and the prosecutrix remained in public places throughout this period. A perusal of the statement of the prosecutrix recorded under Section 164 Cr.P.C., shows that the petitioner did not commit any wrongful act with her. Besides this perusal of the zimini orders of the trial Court would reflect that the trial is being held up only for the arguments on the application filed under Section 319 Cr.P.C. from the last about one year. Though veracity of the allegations would be evaluated by the trial Court only after the conclusion of the trial, however, the petitioner cannot be denied the right of speedy trial, which is being denied by delaying the trial as is apparent from the record of this case. In the overall facts and circumstances of the case, I am of the opinion that learned counsel for the petitioner has been able to make out a case for grant of regular bail to the petitioner. The trial is likely to take time in 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.

20.7.2022
sharmila

(RAJESH BHARDWAJ)
JUDGE

Whether Speaking/Reasoned : Yes/No
Whether Reportable : Yes/No