

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

CRM-M-27093-2021

Date of decision : 24.02.2022

Baljeet Singh @ Nikka

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR.JUSTICE RAJESH BHARDWAJ

Present: Mr. P.S. Brar, Advocate
for the petitioner.

Ms. Sakshi Bakshi, AAG, Punjab.

RAJESH BHARDWAJ, J. (Oral)

The present petition is filed under Section 439 Cr.P.C. by petitioner-Baljeet Singh @ Nikka seeking grant of regular bail in case FIR No.440 dated 07.12.2020, registered under Section 376 of the Indian Penal Code and Section 4 of POCSO (Amended) Act, 2012, 2019 at Police Station City Faridkot, District Faridkot.

As per factual matrix of the case, the present FIR was lodged by the prosecutrix herself named-Surinder Pal Kaur @ Binny. The crux of the allegations in the FIR is that the prosecutrix was in relationship with the accused- Baljeet Singh @ Nikka i.e. the petitioner, who promised her to marry. She alleged that about four-five years ago, the accused used to visit the house of one Gurpreet Kaur and the prosecutrix also used to visit that house. At that time, the prosecutrix was 16 years of age and thus a minor. The accused had sexual intercourse with the victim/prosecutrix on the pretext of the marriage and he used to threaten her. On 01.07.2020 she gave an application in

the office of SSP, which was transferred to Women Cell. However, she did not get any justice. Hence, the prayer was made for taking action against the accused. On the commencement of the investigation, the petitioner was arrested on 09.03.2021. He approached the learned Sessions Judge, Faridkot for the grant of bail, however on hearing the parties, the learned Sessions Judge, Faridkot, declined the same vide order dated 04.05.2021

Aggrieved by the same, the petitioner has approached this Court for the grant of regular bail.

Learned counsel for the petitioner has vehemently contended that the present FIR is totally an abuse of the process of the Court. He submits that the alleged occurrence had taken place four-five years ago, whereas, the present FIR has been lodged after due deliberations in order to blackmail the petitioner. He submits that the prosecutrix was admittedly 20 years of age, at the time of registration of the FIR and it is only in order to implicate the petitioner in heinous offence, the occurrence has been shown to be of about four-five years earlier so as to bring the offence under the POCSO Act. He further submits that on earlier occasion also such application was given to the police, however, no truth was found in the same. Thereafter, clandestinely the present application was given and hence the FIR was registered. He has drawn the attention of the Court to the statement of the prosecutrix recorded under Section 164 Cr.P.C. A reading of the same would show that the prosecutrix had a friendship with the petitioner and her neighbour Gurpreet Kaur introduced her to the petitioner and talks of their marriage were going on. However, the

same did not fructify as the family members of the petitioner opposed the proposed marriage being inter-cast. She was threatened also by the family members. He submits that in the facts and circumstances it is apparent that there was no coercion or exploitation as alleged, on the part of the petitioner. However, the prosecutrix being interested in getting married with the petitioner, had lodged the present FIR to put an undue pressure on the petitioner. He further submits that in such facts and circumstances, the offence under Section 376 IPC is also not attracted. He submits that the material witnesses have since been examined, so the petitioner be enlarged to bail.

Learned State counsel has opposed the submissions made by the learned counsel for the petitioner and submitted that there are specific allegations against the petitioner. She submits that the allegations regarding the occurrence prior to four-five years would definitely fall under the POCSO Act. She further submits that now the prosecutrix has also been examined by the trial Court and she has supported the case of the prosecution and hence there is no case made out for grant of bail. She further submits that out of 17 witnesses, four have been examined.

Heard.

It is apparent that the occurrence in question took place four-five years prior to lodging the FIR.

A perusal of statement recorded under Section 164 Cr.P.C. along with the allegations in the FIR further shows that the prosecutrix as well as the petitioner were in relationship and talks about their marriage were going on. Whether, the offence under Section 376 of IPC

in these facts and circumstances is attracted or not would be totally a subject matter of the outcome of the trial. The Court would refrain from commenting anything on the merits of the case. The material witnesses already stand examined and hence, there is no apprehension of the petitioner for interfering in the ongoing trial.

In the totality of the facts and circumstances of the case when the challan already stands presented and only four witnesses have been examined, the trial of the case would take sufficient long time to conclude and hence no useful purpose would be served by keeping the accused in custody for such a long period. I find that learned counsel for the petitioner succeeds in making out a case for grant of 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 trial Court/Duty Magistrate, concerned. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

(**RAJESH BHARDWAJ**)
JUDGE

24.02.2022

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