

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(109+221)

CRM-M-26900-2022(O&M)
Date of Decision: 04.08.2022

Ali

--Petitioner

Versus

State of Punjab & others

--Respondents

CORAM:- HON'BLE MR. JUSTICE RAJESH BHARDWAJ.

Present:- Mohd. Salim, Advocate for the petitioner.

Mr. Rakeshinder Singh Sidhu, A.A.G., Punjab.

Respondent no.3 in person with Mr. Puneet Palli,
Advocate.

RAJESH BHARDWAJ.J (Oral)

CRM-27160-2022

This is an application praying for adding offence under section 6 of POCSO Act and section 9 of Marriage Prohibition Act in this case.

Learned State counsel submits that he has no objection if the application is allowed.

In view of the averments made in the application, same is allowed. Offence under section 6 of POCSO Act and section 9 of Marriage Prohibition Act is added in the main petition. Office is directed to do the needful.

Main Petition

The present petition has been filed under Section 439 Cr.P.C seeking the benefit of regular bail to the petitioner in case FIR No.0040 dated 28.3.2021 under sections 363, 366-A, 34 I.P.C (later on added sections 3 & 4 of POCSO Act), registered at Police Station, Mukerian, District Hoshiarpur.

As per factual matrix, the FIR in question was lodged by Bagh Hussain, wherein it was alleged that the younger daughter of his brother Nazeer Mohammad, who was 17 years of age, was living with him. On 22.3.2021 when they went to attend a marriage, they found that his niece (respondent no.3) was not at home. They searched for her but failed to do so. On their inquiry they came to know that one boy namely Ali son of Alam Din had enticed her away on the pretext of marriage. FIR was lodged to take legal action against the culprit.

Investigation commenced and the petitioner was arrested on 18.4.2022. He approached learned Addl. Sessions Judge, Hoshiarpur for grant of bail, however, after hearing the parties, the same was declined vide order dated 7.6.2022. Aggrieved by the same petitioner has approached this court for grant of bail.

Learned counsel for the petitioner vehemently contends that petitioner has been falsely implicated in the present case. He submits that from the facts of the case it is apparent that the relationship between the petitioner and respondent no.3 was consensual. It is submitted that both the petitioner and respondent no.3 lived together for about one year and she was recovered on 19.4.2022. He submits that the present FIR has been lodged by respondent no.2 as the relationship between the petitioner and respondent no.3 was not acceptable to him. It is submitted that petitioner and respondent no.3 performed marriage and they approached this court seeking protection of life and liberty by way of filing a petition i.e. CRWP-4352-2021 which was disposed of by this court vide order dated 26.7.2021. It is submitted that thereafter relationship was accepted by the family

members including the complainant. Even a child was born out of the wedlock. Counsel submits that petitioner has no criminal antecedents and thus he deserves to be granted bail.

Complainant, who is present in person as well as her counsel have submitted that they have no objection if the petitioner is granted bail.

On the other hand, learned State counsel on instructions from SI Gurwinder Singh has pointed out that offence under sections 3 and 4 of POCSO Act was never added in this case but learned counsel for petitioner has mentioned the same in the head note of the application. He submits that after the recovery of the prosecutrix she was produced before the Magistrate for recording her statement under Section 164 Cr.P.C, wherein she did not support the allegations made in the FIR. He submits that out of the total 12 prosecution witnesses only one i.e. respondent no.3 has been examined by the Trial Court and she has not supported the case of prosecution.

I have heard learned counsel for the parties at length and have gone through the records carefully.

From the perusal of record, it is apparent that the petitioner and respondent no.3 lived together for about one year. They performed marriage and a child was born out of the wedlock. In her statement recorded under section 164 Cr.P.C prosecutrix/respondent no.3 did not support the allegations made in the FIR. Besides this, she was examined by the Trial Court as PW-1. In her deposition also she did not support the case of prosecution and was declared hostile. Prosecutrix/respondent no.3 has herself admitted the fact regarding marriage with the petitioner and having been blessed with a child from their relationship. This court would refrain

itself from commenting on the merits of the case, as the allegations and counter allegations would be assessed only after evaluation of the complete evidence led by both the sides before the Trial Court. The trial would take sufficiently long time in its conclusion.

In the totality of facts and circumstances and without making any observation on merits, present petition is allowed. Petitioner be enlarged on bail on his furnishing bail/surety bonds subject to satisfaction of Trial Court/Duty Magistrate, concerned. Nothing stated herein shall be treated as an expression on the merits of the case.

(RAJESH BHARDWAJ)
JUDGE

04.08.2022

lucky

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