

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(208)

CRM-M-27504-2022

Date of decision: - 30.06.2022

Jatin alias Baggal

....Petitioner

Versus

State of Haryana

.....Respondent

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Namit Khurana, Advocate
for the petitioner.

Mr. Tanuj Sharma, AAG, Haryana.

VIKAS BAHL, J. (ORAL)

This is a first petition under Section 439 Cr.P.C. for grant of regular bail in FIR No.417 dated 21.10.2021, under Sections 343, 363, 366-A and 506 IPC and Sections 4, 6 and 17 of the Protection of Children from Sexual Offences Act, 2012, registered at Police Station Gandhi Nagar, District Yamuna Nagar.

Learned counsel for the petitioner has submitted that in the present case, the petitioner has been falsely implicated only on account of the pressure put by the parents of the prosecutrix and a complaint has been filed by the father of the prosecutrix on the ground that the present petitioner had allured his daughter with an intention to perform marriage with her. Learned counsel for the petitioner has referred to the statement dated 10.11.2021 (Annexure P-2) recorded under Section 164 Cr.P.C, in

which, it has been specifically stated by the prosecutrix that her family members wanted to perform her marriage forcibly with some aged person because of which, she was feeling harassed and that she had gone with the present petitioner out of her own free will and that no wrongful act had been done by the present petitioner and even sought police protection for the petitioner and herself. Further reference has been made to another statement dated 10.11.2021 (Annexure P-3), which has been recorded by the prosecutrix before the Child Welfare Committee, which is also in favour of the present petitioner. It is submitted that subsequent to the recording of the said statement, the police have recorded a statement dated 15.11.2021 (Annexure P-4) implicating the present petitioner in the present case whereas in fact, the prosecutrix had filed repeated representations (Annexures P-7 and P-8) to various police authorities that the FIR should be cancelled. It is also submitted that the petitioner and the prosecutrix had filed a petition for protection before this Court also. It is stated that the petitioner has been in custody since 19.01.2022 and the challan has already been presented and there are 17 prosecution witnesses, out of which, only 3 have been examined and 14 are yet to be examined, thus, the trial is likely to take time.

Learned State counsel, on the other hand, has opposed the present petition for regular bail and has submitted that at the time of the registration of the FIR, the petitioner was 17 years and 4 months old and was a minor and although, in the first statement under Section 164 Cr.P.C, she had deposed in favour of the petitioner, but in the subsequent statement under Section 164 Cr.P.C. as well as when she appeared before

the trial Court, she has deposed against the present petitioner and thus, the petitioner does not deserve the concession of regular bail.

Learned counsel for the petitioner, in rebuttal, has submitted that even after the second statement under Section 164 Cr.P.C., the prosecutrix had gone with the petitioner out of her own free will. It is further submitted that the prosecutrix has attained majority now and she wishes to solemnize marriage with the petitioner and the petitioner also wants to marry the prosecutrix. Learned counsel for the petitioner has produced on record an affidavit of the said prosecutrix, in which, she has stated that she has left her parental house due to severe beatings, which have been given to her by her family members and continuous threats to kill her have been levelled and she wants to solemnize marriage with the present petitioner out of her own free will. The copy of the said affidavit is taken on record and has been marked as 'Mark A'.

Learned counsel for the petitioner has also referred to the cross-examination of the prosecutrix (Annexure P-6), in which, she has specifically stated that she and the present petitioner wish to solemnize marriage.

This Court has heard learned counsel for the parties and has perused the paper book.

The petitioner has been in custody since 19.01.2022 and the challan has already been presented and there are 17 prosecution witnesses, out of which, only 3 have been examined and 14 are yet to be examined, thus, the trial is likely to take time. The FIR has been registered by the father of the prosecutrix on the allegations that present

petitioner had allured the prosecutrix to perform marriage with him. On 10.11.2021, the statement of the prosecutrix was recorded under Section 164 Cr.P.C. The relevant portion of the said statement is reproduced as under: -

"Ans. My family members wants to perform my marriage forcibly with some old man. I was feeling harassed so I had gone from house. I had gone with Jatin with my own free will. Nothing wrongful act has been done nor performed the marriage. My family members have been giving threat to kill me and Jatin. Police protection may be given to me and Jatin. I know very well my good and bad. Jatin is not at fault in any manner nor he has encouraged or allured me. Whatever I have done was with my own free will. No one is at any fault in any manner. I want to continue my study. My documents may be got returned. I do not want any action against Jatin. Jatin had taken me with him on my asking. I want to live at the house of Jatin.

*RO&ACT
Sd/-Palwinder Kaur
Identified sd/- SI*

*sd/-
RAJVINDER SINGH
Judicial Magistrate 1st Class
Yamuna Nagar at Jagadhri
10/11/21"*

Perusal of the said statement would show that the prosecutrix had specifically stated that she had gone with the present petitioner out of her own free will and she wanted protection for the petitioner and herself. Similarly, on 10.11.2021, the prosecutrix had given a statement in favour of the petitioner before the Child Welfare Committee and even in the said statement she had stated that she had gone to the High Court for seeking police protection. Even a perusal of the cross-examination of the prosecutrix would show that it has been specifically stated by her that she had started talking to the accused on mobile phone of her father at night and that the petitioner used to say that he wanted to solemnize marriage

with her and that the prosecutrix was also agreeable to the same and that she had agreed to the fact that they leave the house and solemnize marriage and had further stated that she was never forced at any point of time to establish relationship. Learned counsel for the petitioner has submitted that the prosecutrix is being brutally beaten up by her parents and is put under constant pressure and has referred to the original affidavit of the said prosecutrix, which has been produced in the Court today and has already been taken on record as 'Mark A'. The relevant portion of the said affidavit is reproduced hereinunder: -

"3. That I, the deponent on 21.10.2021 with my own free will had gone with Jatin to seek protection from High Court at Chandigarh because my family members wants to perform my marriage forcibly with some old man and they had been putting pressure upon me since last one year and were not allowing me to go out of the house. I was feeling harassed at the hands of my family members as they were giving continuous threats to kill me if I do not perform marriage as per their wishes, so in order to save my life, I had willingly gone with Jatin.

4. That I, the deponent is major and have willingly left the house due to the severe beatings given to me by my family members and continuous threats to kill me and I want to solemnize marriage with Jain with my own free will.

Deponent

Verification:

Verified that the facts mentioned in the aforesaid affidavit are true and correct to the best of my knowledge and belief and nothing is false therein and nor anything has been concealed.

Place: Chandigarh

Dated: 28/06/2022

Deponent"

Keeping in view the abovesaid facts and circumstances, 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 and subject to him not being required in any other case.

However, it is made clear that in case, any act is done by the petitioner to threaten or influence the complainant or any of the witnesses, then it would be open to the State to move an application for cancellation of bail granted to the petitioner.

Nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.

Pending miscellaneous application(s), if any, stand disposed of in view of the abovesaid order.

June 30, 2022
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes
Yes