

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

CRM-M-28549-2022

Date of Decision: 18.11.2022

Manny Kumar

..... Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Amaninder Singh Sekhon, Advocate, for the petitioner.

Mr. Karunesh Kaushal, Assistant Advocate General, Punjab.

Rajesh Bhardwaj, J. (ORAL)

Prayer in the present petition is for the grant of regular bail to the petitioner in a case FIR No.60 dated 26.03.2022, registered under Sections 363, 366-A, 120-B IPC, at Police Station City Sri Muktsar Sahib, District Sri Muktsar Sahib.

As per factual matrix of the case, the present FIR was lodged by the father of the victim, wherein, it was alleged that he used to do labour work and has three children i.e. two daughter and one son. His elder daughter i.e. victim (name concealed) was 17 years of age and student of 11th class. On 21.3.2022, his daughter went to School to appear in the exam. After the exam, when her brother went to bring her, she was not found in the School. On enquiry they came to know that her daughter has been enticed away by Manny son of Ashwani Kumar i.e. the petitioner. It was suspected that Manny and his family members have enticed away his minor daughter on the pretext of marriage. The complaint was lodged with a request to take legal action against the culprits. On the basis of the complaint, the FIR was lodged and investigation commenced. During the

investigation, the petitioner and the victim were recovered on 27.03.2022. The petitioner was arrested on the same day i.e. 27.03.2022. On the other hand, the prosecutrix was produced before the Judicial Magistrate for recording her statement under Section 164 Cr.P.C. The Investigating Agency also tried to get her medically examined, however, she refused for the same and hence, she could not be medically examined. The petitioner approached the Court of learned Special Court, Sri Muktsar Sahib for grant of bail, who, after hearing the parties, declined the same vide order dated 29.04.2022. Aggrieved by the same, the petitioner has approached this Court by way of filing the present petition for grant of bail.

It has been vehemently contended by learned counsel for the petitioner that the petitioner and the prosecutrix both are of the tender age and are at the threshold of their life. He has submitted that as per the case of the prosecution, the prosecutrix eloped from her home on 21.03.2022 and they were recovered on 27.03.2022 i.e. after six days. He submits that during this period they resided in public places and travelled in the public conveyance and there is nothing to show that there was any coercion used by the petitioner against the prosecutrix. He has submitted that the prosecutrix was produced before the learned Magistrate for recording of her statement under Section 164 Cr.P.C. He has drawn the attention of this Court to the statement recorded on 1.4.2022, wherein the prosecutrix emphatically deposed that on 21.03.2022, she boarded the bus from the bus stand and reached Kotkapura. She borrowed a phone from a passerby and made a call to Mani i.e. the petitioner and called him to bus stand. Thereafter, they boarded a bus for Mohali and went to Gurudwara Sahib. He submits that in this statement, the prosecutrix herself proved that the

petitioner is innocent. He has further submitted that that there are no allegations pertaining to any sexual abuse committed by the petitioner against the prosecutrix. He has submitted that the investigation is complete and the petitioner has no criminal antecedents. He submits that in the overall facts and circumstances of the case, the petitioner deserves to be granted bail.

On the other hand, learned State counsel has opposed the submissions made by learned counsel for the petitioner and on instructions from HC Swaran Singh has submitted that even if the prosecutrix is consenting party, it cannot be ignored that she was less than 18 years of age and was minor, thus, her consent is immaterial. He further submits that the petitioner and the prosecutrix remained together for about six days and thereafter they were recovered by the Investigating Agency on 27.03.2022. He submits that the investigation is complete and report under Section 173 Cr.P.C. has been submitted and charges have also been framed. He submits that as per the instructions provided to him, the petitioner is not involved in any other criminal case except the present case.

Heard.

Evidently, the petitioner and the prosecutrix remained together for about six days. After recovery, she was produced before the learned Judicial Magistrate for recording her statement under Section 164 Cr.P.C., wherein she deposed that she went with the petitioner at her own will and both of them had travelled by bus to various places. She did not give any consent to undergo the medical test and hence, the same could not be conducted. The investigation is complete and charges are framed. There is nothing on record showing that the petitioner has any criminal antecedents.

The veracity of the allegations would be evaluated by the trial Court only after appreciation of the complete evidence led by both the parties. This Court would refrain itself from commenting anything on the merits of the case, however, considering the prayer for grant of bail to the petitioner, I am of the view that learned counsel for the petitioner has been able to make out a case for grant of regular bail to the petitioner. The trial would take sufficiently long time for 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.

18.11.2022

sharmila

Whether Speaking/Reasoned :

Whether Reportable :

(RAJESH BHARDWAJ)

JUDGE

Yes/No

Yes/No