

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(223)

CRM-M-31755-2021

Date of Decision: 25.04.2022

Rajat

--Petitioner

Versus

State of Haryana

--Respondent

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

Present:- Mr. P.S. Jammu, Advocate for the petitioner.

Mr. Neeraj Poswal, A.A.G., Haryana.

Ms. Suman Kumari, Advocate for
Mr. S.S. Sahu, Advocate for the complainant.

RAJESH BHARDWAJ.J (Oral)

The present petition has been filed under Section 439 Cr.P.C for grant of regular bail to the petitioner in FIR No.84 dated 5.2.2021 registered under Sections 363, 366-A, 376 IPC and Section 4 of POCSO Act at Police Station, City Sirsa, District Sirsa.

As per facts of the case, present FIR was lodged by Shyam Lal, who is father of the victim. The sum and substance of the allegations in the FIR is that his daughter i.e. victim (name concealed) was 17 years 2 months old and was studying in 10+2 in Govt. Girls High School, Sirsa. On 5.2.2021 she went to school, however, did not return. On inquiry it was found that she did not attend the school on that day. They inquired from the relatives and friends but failed to trace her. On further inquiring they got a strong suspicion that their neighbor Rajat i.e. the present petitioner had allured her away on pretext of marriage. His daughter took about 8 tolas of gold and necessary documents along with her. It was requested to take legal action against the culprit.

The investigation commenced and the victim was recovered on 8.2.2021 from Fatehabad. She was produced before the Magistrate for recording her statement under Section 164 Cr.P.C on 9.2.2021, wherein she deposed that on 5.2.2021 after school she went with Rajat. Thereafter they went to Jaipur and then to Pushkar, where they took one room on rent in a hotel and the petitioner committed wrong act with her. The petitioner was arrested on 20.2.2021. He approached learned Addl. Sessions Judge, Sirsa for grant of bail, however, after hearing the parties, the same was declined vide order dated 2.8.2021. Aggrieved by the same petitioner has approached this court for grant of bail.

Learned counsel for the petitioner has vehemently contended that the petitioner has been falsely and frivolously implicated in the present case. It is submitted that petitioner is a young boy of 19 years of age. Counsel submits that prosecutrix is more than 17 years of age. While deposing before the Magistrate in her statement under Section 164 Cr.P.C she stated that she went with the petitioner of her own and thereafter they travelled by public transport and lived in public places. Counsel submits that from the facts and circumstances of the case, it is apparent that there was a consensual relationship between the petitioner and the victim and there was no coercion on the part of the petitioner in alluring the victim. Counsel has further submitted that the material witnesses i.e. the victim, her father and her mother have already been examined as PW-1, PW-2 and PW-3 respectively. Copies of their deposition have been placed on record for the perusal of the Court. It is submitted that all these witnesses have not supported the case of the prosecution and on the request of learned Public Prosecutor all these three witnesses have been declared hostile. A perusal

of the deposition of the victim would show that she did not lodge the present FIR, however, her father might have registered the present case but she never went to police station for lodging the FIR. She deposed that she did not know the accused Rajat, who was present in the court through video conferencing. Similarly parents of the victim were also declared hostile as they also deposed on the similar lines. Counsel submits that petitioner has an impeccable record and he has never been involved in an offence of the similar nature. Counsel submits that in the overall facts and circumstances of the case, the petitioner deserves to be granted bail.

Learned counsel appearing for the complainant has strongly opposed the submissions made by counsel for petitioner and submits that victim is a minor and there are specific allegations against the petitioner.

On the other hand learned State counsel on instructions from ASI Mahabir Singh has also strongly opposed the submissions made by counsel for petitioner and submits that even if there was consent on the part of the victim, however, she being a minor, same has no legal sanctity in the eyes of law. He, however, candidly acknowledges that all the material witnesses have already been examined by the Trial Court and they have not supported the case of the prosecution. He submits that a perusal of the FSL Report would show that the case of the prosecution is medically corroborated. He also submits that report of DNA is still awaited. It is submitted that out of total 21 prosecution witnesses 11 have already been examined.

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

The petitioner is a young boy of 19 years, whereas the victim is less than 18 years of age. In her statement recorded under Section 164 Cr.P.C she deposed that she went with the petitioner of her own and thereafter they went to Jaipur and Pushkar by public transport and lived in public places. Admittedly all the three material witnesses have not supported the case of the prosecution and hence were declared hostile. There is nothing on record to show that petitioner had been involved in offences of similar nature. The veracity of the allegations levelled in the FIR would be assessed only after conclusion of the trial. In the overall facts and circumstances of the case, this Court finds that counsel for petitioner succeeds in making out a case for grant of bail to the petitioner.

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

25.04.2022

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