

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

CRM-M-28630-2020

Date of decision : 26.07.2022

Amandeep Singh

.....Petitioner

versus

State of Punjab and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. B.B.S. Randhawa, Advocate
for the petitioner.

Ms. Sakshi Bakshi, AAG, Punjab.

Ms. B.K. Bhangu, Advocate
for respondent No.2.

RAJESH BHARDWAJ, J. (Oral)

Prayer in the present petition is for grant of regular bail to the petitioner in case FIR No.99 dated 26.05.2020, under Sections 363, 366-A, 120-B of IPC and Sections 3, 4 of POCSO Act, 2012 added subsequently, registered at Police Station Kotwali, Kapurthala, District Kapurthala.

As per the facts of the case, the present FIR was lodged by father of the victim namely, Kulwinder Singh, wherein, he alleged that he is working as a Granthi in Village Gurdwara and his elder daughter i.e. the victim is about 16 years of age and her date of birth is 25.07.2004. In the intervening night of 25/26.05.2020 when the family was sleeping and at about 4 O'clock when they woke up, they found her missing. They tried their level best to search her, however, failed to trace. He alleged that petitioner-Amandeep Singh son of Karnail Singh of their village used to harass his daughter many times, however, for the sake of the honour of the family, they did not report the matter. He suspected that his daughter

has been kidnapped by Amandeep Singh with connivance of his mother Shindo and sister-in-law Raj and Karnail Singh, resident of Khukhrain and one Gian Singh on the pretext of performing the marriage. On the basis of the statement, the FIR was registered. Investigation commenced. The prosecutrix was recovered on 19.07.2020 from the custody of the petitioner. She was produced before the learned Magistrate and her statement under Section 164 Cr.P.C. was recorded on 20.07.2020. The petitioner approached the Court of learned Additional Sessions Judge, Kapurthala praying for grant of bail. However, after hearing both the sides, the same was declined by the learned Additional Sessions Judge vide her order dated 10.09.2020. Aggrieved by the same, the petitioner is before this Court praying for grant of regular bail.

Learned counsel for the petitioner has contended that the petitioner has been falsely implicated in this case. He submits that as per the allegations in the FIR, the prosecutrix found missing from her house in the intervening night of 25/26.05.2020 and thereafter, she was recovered on 19.07.2020 i.e. almost after two months. He submits that the statement of the prosecutrix was recorded under Section 164 Cr.P.C. wherein she specifically deposed that her parents wanted to perform her marriage forcibly with an elderly person aged about 30/40 years and she was in love with the petitioner. He further submits that though the prosecutrix was less than 18 years of age, however, she went with the petitioner of her own will and there was no coercion whatsoever on the part of the petitioner. He has further submitted that the prosecutrix and her father have been examined by the trial Court as PW-1 and PW-2 respectively. He has drawn the attention of this Court to the deposition of

the prosecutrix wherein she deposed during her examination that she did not identify the accused present in the Court. She further deposed that no one committed rape or committed sexual intercourse with her. She gave her statement under Section 164 Cr.P.C. in the Court on 24.08.2020 at the instance of the parents as stated by him. On the request of learned Addl. PP, she was declared hostile. Learned counsel submits that similarly, her father also did not support the case of the prosecution. He submits that as the prosecutrix and her father who are the material witnesses have been examined and they have not supported the case of the prosecution, further incarceration of the petitioner is totally unwarranted. He submits that even otherwise, the petitioner has no criminal antecedents.

Learned State counsel has submitted that the prosecutrix was less than 18 years of age on the date of occurrence and thus, being minor, her consent has no legal sanctity. However, she submits that out of 21 prosecution witnesses, 04 witnesses including the prosecutrix and her father have been examined and neither have supported the case of the prosecution. She submits that as per the record, petitioner is not facing trial in any other case except the present case.

I have heard counsel for the parties and perused the record.

Admittedly, the prosecutrix went missing on the intervening night of 25/26.05.2020 and thereafter, on 19.07.2020, she was recovered from the custody of the petitioner i.e. after about a period of 02 months and during this period, they remained at various different places. Though the prosecutrix is less than 18 years of age, however, perusal of her statement before the trial Court as a prosecution witness shows that she has not supported the case of the prosecution.

Her father also did not support the case of the prosecution during examination before the trial Court. There is nothing on record showing that the petitioner has any criminal antecedents.

The veracity of the allegations would be assessed by the trial Court after conclusion of the trial after appreciating complete set of evidence to be produced before it. The trial of the case will take sufficient long time and no useful purpose will be served by keeping the petitioner in custody for such a long time. However, confining to the prayer made for the grant of bail, this Court is convinced that the counsel for the petitioner succeeds in making out a case for grant of regular 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 concerned trial Court/Duty Magistrate. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

26.07.2022
m. sharma

(RAJESH BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No