

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(229)

CRM-M-33055-2022
Date of Decision: 03.08.2022

Zulfukar @ Sonu

--Petitioner

Versus

State of Haryana

--Respondent

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

Present:- Mr. Munish Bhardwaj, Advocate for the petitioner.

Mr. Kirpal Singh, A.A.G., Haryana.

RAJESH BHARDWAJ.J (Oral)

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.02 dated 3.1.2021 under sections 363, 366-A I.P.C and section 6 of POCSO Act, registered at Police Station, Sector 10, Gurugram.

As per factual matrix, the FIR in question was lodged by brother of the victim, wherein it was alleged that his sister i.e. the victim was 16 years of age. She had gone out of the house at about 11 AM, however, did not return. It came to their notice that one boy namely Zulfukar i.e. the present petitioner had enticed her away. FIR was lodged to take legal action against the culprit.

Investigation commenced and the prosecutrix was recovered on 8.3.2021. Her statement under section 164 Cr.P.C was recorded and her medical examination was also got conducted. Petitioner was arrested on 11.3.2021. He approached learned Addl. Sessions Judge, Gurugram for grant of bail, however, after hearing the parties, the same was declined vide

order dated 1.10.2021. 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 petitioner and the prosecutrix were in relationship and they lived together for about two months. He submits that there was no coercion on the part of the petitioner and it was not possible for him to keep the victim by force for two months. He submits that during this period petitioner and the prosecutrix lived in Bijnaur (U.P.) and hence were in public place. He submits that in her statement recorded under section 164 Cr.P.C victim totally exonerated the petitioner from any offence, however, allegations have been levelled only by her family members, who were not happy with the relationship of the victim and petitioner. It is submitted that even from the medical record no coercion has been proved against the petitioner. After her recovery the victim was compelled by her family members to depose against the petitioner and hence during her examination before the Trial Court she has supported the case of the prosecution and thus took a stand contrary to the stand taken by her while recording statement under section 164 Cr.P.C. Counsel submits that as the material witnesses already stand examined there cannot be any apprehension with regard to the petitioner having influenced the prosecution witnesses and therefore he deserves to be granted bail.

On the other hand, learned State counsel has opposed the submissions made by counsel for petitioner. He submits that the prosecutrix is a minor and therefore even if there was consent on her part,

the same has no legal sanctity in the eyes of law. He submits that though the prosecutrix has exonerated the petitioner in her statement recorded under section 164 Cr.P.C, however, she has been examined by the prosecution as PW-5 and she has duly supported the case of prosecution. He submits that in all there are 16 prosecution witnesses out of which 10 already stand examined including the material witnesses. He further submits that petitioner is not involved in any other criminal case.

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

Admittedly, petitioner is behind bars since 11.3.2021. As per case of the prosecution petitioner and victim lived together for about two months and throughout this period they moved from one place to another place. Admittedly, victim is a minor and she has totally exonerated the petitioner in her statement recorded under Section 164 Cr.P.C, however, now she has been examined by the Trial Court and she has supported the case of the prosecution. As per statement made by learned State counsel all the material witnesses already stand examined and now the formal witnesses remain to be examined. There is nothing on record to show that the petitioner has criminal antecedents. 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

03.08.2022
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Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No