

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

CRM-M-38081-2021

Date of decision : 21.02.2022

Tushar @ Ballu

.... Petitioner

Versus

State of Haryana

.... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Mohit Garg, Advocate
for the petitioner.

Mr. Vishal Kashyap, DAG, Haryana.

RAJESH BHARDWAJ, J. (ORAL)

Matter has been taken up through video conferencing via Webex facility in the light of the Pandemic Covid-19 situation and as per instructions.

Prayer in the present petition is for grant of regular bail to the petitioner in case FIR No.384 dated 15.09.2020, registered under Sections 363, 366-A of the Indian Penal Code (Sections 363, 406, 506 IPC and Section 6 of POCSO Act added later on), at Police Station Pataudi, District Gurugram.

As per factual matrix of the case, the present FIR was lodged by father of the victim namely, Naresh son of Chander. It was alleged that his daughter-victim (name concealed) was missing from the house since 14.09.2020. It was found that cash of Rs.2,00,000/- and ornaments were also missing from the house. They enquired from all the possible relatives and friends, however, failed to trace her. It was suspected that someone had

allured his minor daughter. The request was made to trace out his minor daughter and to take necessary action against the culprits. Pursuant to the FIR, investigation commenced and petitioner was arrested on 16.09.2020. Thereafter, petitioner approached learned Additional Sessions Judge (Fast Track Court), Gurugram for grant of bail, who after hearing counsel for the parties, declined the same vide order dated 10.08.2021. Aggrieved by the same, petitioner has approached this Court by way of filing the present petition.

It has been contended by counsel for the petitioner that petitioner has been falsely implicated in this case. He submits that petitioner is a young boy of 21 years of age and is at the threshold of his life. He has submitted that both the petitioner and the victim were in consensual relationship and they went together with their own free will. There was no coercion or threat whatsoever on the part of the petitioner in compelling the victim to go with him. However, the family members of the victim were against their relationship. Hence, her father lodged the present FIR. He submits that the victim was recovered on the very next date i.e. on 15.09.2020 and she was produced before the learned Magistrate, Pataudi for recording her statement under Section 164 Cr.P.C. He has drawn the attention of this Court to the statement made by the victim. The same would reveal that the victim had deposed that on 14.09.2020, she had gone away from her house taking Rs.50,000/-without disclosing anyone, with her friend Tushar i.e. the petitioner. She purchased a mobile of Rs.28,000/- in the name of Tushar. Thereafter, they stayed in OYO Hotel, Gurugram after booking one room for night. They also made voluntarily physical

relationship. She further stated that there was no fault of Tushar and he was innocent. Learned counsel submits that from the reading of the statement under Section 164 Cr.P.C., it is apparent that the relationship between the petitioner and the prosecutrix was consensual and the petitioner is totally innocent. He submits that it is under the pressure of the family members, the alleged victim had been compelled to depose against the innocent petitioner. He submits that now victim and the complainant are also examined by the trial Court. Even if they have supported the case of the prosecution, the innocence of the petitioner is writ large and there cannot be any apprehension to be alleged on the part of the petitioner for influencing the victim who has already been examined before the trial Court. Hence, he deserves to be enlarged on bail.

Learned State counsel opposes the submissions made by counsel for the petitioner. He, on instructions from SI Rajbala, submits that the victim is minor and hence, her consent is immaterial in the eyes of law. He submits that the complainant and the victim both are examined by the trial Court and they have duly supported the case of the prosecution. He further submits that out of total 21 prosecution witnesses, 09 witnesses have been examined till date.

I have heard both the counsel for the parties and perused the records.

Petitioner is a young boy of 21 years of age. As per the allegations, victim and the petitioner, both went from the house on 14.09.2020 and stayed overnight in a hotel and the victim was recovered on 15.09.2020. Her statement under Section 164 Cr.P.C. was recorded in which

she deposed that petitioner was innocent and they established physical relationship with her consent. The prosecutrix and the complainant, both stand examined. This Court would refrain from commenting anything on the merits of the case and the allegations and the counter-allegations would be evaluated by the trial Court on the conclusion of the evidence to be led before it by the parties. In the overall facts and circumstances of the case, it is apparent that the trial of the case will take sufficient time and no useful purpose will be served by keeping the petitioner in custody for such a long time. Keeping in view the abovesaid facts, this Court finds that learned counsel for the petitioner has succeeded 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.

(**RAJESH BHARDWAJ**)
JUDGE

21.02.2022
m. sharma

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