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

CRM-M-38827-2021

Date of Decision: July 18, 2022

Nitish Kumar

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR.JUSTICE RAJESH BHARDWAJ

Present: Mr.Johan Kumar, Advocate
for the petitioner.

Mr.Neeraj Poswal, AAG, Haryana.

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RAJESH BHARDWAJ, J.(ORAL)

Instant petition has been filed under Section 439 Cr.P.C. praying for grant of regular bail to the petitioner in case FIR No.681, dated 06.07.2018, under Sections 363, 366-A IPC and Section 6 of POCSO Act added later on, registered at Police Station City Ballabgarh, District Faridabad.

As per the factual matrix of the case, the complaint was lodged to the police by Shri Ram, i.e. father of the victim, wherein it was alleged that he had four children and his daughter, i.e., the victim (name concealed) was 17 years of age. One boy, namely, Nitish S/o Gary Madal used to reside in his neighbourhood. He used to talk on phone with his daughter. On 02.07.2018 at about 12.45 p.m., his minor daughter went to the market but did not return. They tried to trace her out, however, failed to trace her. It was suspected that Nitish had enticed her away. He filed a complaint with a request to take the legal action against the culprit. FIR was lodged and

Additional Sessions Judge, Fast Track Special Court, Faridabad, who, after hearing the parties, declined the same vide its order dated 13.08.2021. Aggrieved by the same, the petitioner is before this Court praying for grant of bail.

Counsel for the petitioner has vehemently contended that petitioner has been falsely implicated in this case. He submits that petitioner is 25 years of age whereas the victim in this case is more than 17 years of age, but she is less than 18 years. He submits that at the most relationship between the petitioner and the victim was consensual one. He submits that FIR was lodged on 06.07.2018 and the prosecutrix was recovered on 29.10.2019 whereas the petitioner was arrested on 17.09.2020. He submits that during their stay, the prosecutrix delivered a child. He submits that now the prosecutrix is re-married with some other boy, namely, Deepak. He submits that even otherwise, both the complainant and the prosecutrix have been examined and both of them have supported the case of the prosecution, and hence, there is no apprehension whatsoever which can be projected on the part of the petitioner of having tampering with the evidence as the prosecutrix has already been examined. He submits that petitioner is behind bars for the last about two years and no useful purpose would be served to keep him in custody further.

Learned State counsel on the other hand has opposed the submission made by learned counsel for the petitioner. He submits that the petitioner remained with the prosecutrix for about 1 ½ years and thereafter the prosecutrix was recovered on 29.10.2019. He submits that the prosecutrix and the complainant both have supported the case of the prosecution and as the prosecutrix is minor, the petitioner has no case for

grant of bail. He fairly submits that both the complainant and the prosecutrix have been examined and they have supported the case of the prosecution.

After hearing the counsel for the parties and perusing the record it is apparent that the prosecutrix is about 17 years of age. The petitioner and the prosecutrix both remained together for about 1 ½ years and during this period, the prosecutrix delivered a female child also. After recovery of the prosecutrix, she has been examined by the trial Court and she is now re-married. The prosecutrix and the complainant have also been examined by the trial Court. There is nothing on record showing that the petitioner has any other case against him besides this case.

Keeping in view the custody and the overall facts of the case, this Court finds that the counsel for the petitioner succeeds in making out a case for grant of bail to the petitioner.

The trial would take some time for its conclusion and no purpose would be served by keeping the petitioner behind the bars for further period.

Petition is allowed.

Bail to the satisfaction of trial Court/Duty Magistrate concerned. However, the trial Court would ensure the local surety.

Nothing said hereinabove shall be construed to be an expression on the merits of the case.

July 18, 2022
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(RAJESH BHARDWAJ)
JUDGE

1. Whether speaking/reasoned ?
2. Whether reportable ?

Yes/No
Yes/No