

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

CRM-M-37876-2022

Date of decision : 30.08.2022

Ajay

.....Petitioner

versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Prateek Pandit, Advocate
for the petitioner.

Mr. Karunesh Kaushal, AAG, Punjab.

RAJESH BHARDWAJ, J. (Oral)

Prayer in the present petition is for grant of regular bail to the petitioner in case FIR No.178 dated 25.06.2021, under Section 366 IPC (offence under Sections 363, 366-A of IPC deleted later on and offence under Section 366 IPC added), at Police Station Sultanpur Lodhi, District Kapurthala.

As per the facts of the case, the present FIR was lodged by father of the victim namely, Resham Singh. It was alleged that his daughter (name concealed) is about 17 ½ years of age and studying in 10+2. In the night of 22nd June, 2021, she was allured away by Ajay son of Sohan. It was alleged that Ajay and his daughter had a friendship since long. They tried to make Ajay understand, however, he did not mend his ways. They tried a lot to search his daughter, however, failed to trace her. The complaint was lodged to take legal action against the accused. On the basis of the complaint, the FIR was registered and investigation commenced. During investigation, the prosecutrix was recovered on 14th

July, 2021 from the bus-stand of Sultanpur Lodhi. The petitioner was arrested on 15th July, 2021. He approached the learned Judge Special Court, Kapurthala praying for grant of bail. However, after hearing counsel for both the sides, learned Judge Special Court, Kapurthala declined the same vide its order dated 20th May, 2022. Aggrieved by the same, the petitioner is before this Court praying for grant of regular bail.

It has been contended by learned counsel for the petitioner that the petitioner is a young boy who has been falsely and frivolously implicated in this case. He has submitted that the FIR has been lodged by father of the victim who opposed the relationship between the petitioner and the prosecutrix. He has submitted that even as per case of the prosecution, the prosecutrix is more than 18 years of age and it was on account of the same, the offence under the POCSO Act was not incorporated. He has submitted that as per the prosecution case, the prosecutrix went missing on 22nd June, 2021 and thereafter, she was recovered on 14th July, 2021 i.e. after about 22-23 days. Her statement under Section 164 Cr.P.C. was recorded by the learned Additional Sub Divisional Judicial Magistrate Ist Class, Sultanpur Lodhi. He submits that the prosecutrix specifically deposed before the learned Judicial Magistrate that she was major. She deposed that petitioner and the prosecutrix both were in love with each other. However, her parents were against their relationship. On 22nd June, 2021, she left the home in the night. She deposed that Ajay never asked her to leave home. Both of them kept roaming in the neighbouring areas. She had come to the bus-stand Sultanpur Lodhi where the police arrested her. He submits that not only this, realizing that the prosecutrix would not support the case of the

prosecution, the investigating agency at the time of filing the challan has not even cited the prosecutrix as the prosecution witness. He submits that once the prosecutrix herself is not cited as a witness, the case of the prosecution falls flat. He has submitted that the petitioner has no criminal antecedents. The investigation is already complete and the charges are also framed and hence, the petitioner deserves to be granted bail.

Learned State counsel, on the other hand, on instructions from ASI Major Singh, has submitted that the FIR was lodged by father of the prosecutrix wherein he has suspected the petitioner having allured his daughter. However, he candidly acknowledges that during her statement under Section 164 Cr.P.C., she did not support the case of the prosecution and deposed that she was in a consensual relationship with the petitioner. However, he submits that out of 14 prosecution witnesses, 02 witnesses already stand examined. He also submits that as per the instructions received, petitioner does not have any criminal antecedents.

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

Petitioner is behind bars since 15.07.2021. The prosecutrix went missing on 22nd June, 2021 and thereafter, she was recovered on 14th July, 2021 i.e. about 22-23 days. It is during their stay throughout they remained in public places and had been travelling by public conveyance. There is nothing on record to show that there was any type of complaint filed or any residence shown by the prosecutrix during said period of 22-23 days. This is also argued before this Court that the prosecutrix is not even cited as the prosecution witness. The investigation is complete, charges are also framed. There is nothing on record to show that the petitioner has any criminal antecedents. The Court would refrain

from commenting anything on the merits of the case.

The trial would take sufficiently long time in its conclusion. The veracity of the allegations would be assessed by the trial Court only after the conclusion of the trial. However, in the overall facts and circumstances of the case, 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.

(RAJESH BHARDWAJ)
JUDGE

30.08.2022
m. sharma

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