

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

CRM-M-37266-2020 (O&M)

Date of decision: 10.5.2022

Shyam Sahni

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Charanpreet Singh, Advocate, for the petitioner.

Mr. Rakeshinder Singh Sidhu, AAG, Punjab.

RAJESH BHARDWAJ, J. (Oral)

Prayer in the present petition is for the grant of regular bail to the petitioner in a case FIR No.128 dated 7.7.2019, registered under Sections 363/366-A/376 IPC and Sections 3 and 4 of POCSO Act, 2012, at Police Station Haibowal, District Ludhiana.

As per the factual matrix of the case, the present FIR was lodged by the father of the victim Lachmi Sahni. As per the allegations in the FIR, his youngest daughter i.e. the victim was 14 years of age. On 1.7.2019, all the family members except the victim went to work and when they returned home at 9:00 pm, they found the victim not present at home. They enquired from all the probable places, however, failed to trace her. At about 10:30 pm, they received a phone call, on which the victim was speaking and she said that she was going with Ashok Sahni brother-in-law of son-in-law of paternal uncle. She said that she would return in 1-2 days. The family members tried their best to search Shyam Sahni and the victim, however, the victim did not come back. It was suspected that Shyam Sahni had enticed away his minor daughter on the

pretext of marriage. The FIR was lodged for taking the legal action. After lodging the FIR, the investigation commenced and the victim was recovered on 7.7.2019 and produced before the learned Magistrate, Ludhiana on 15.7.2019. The petitioner was arrested on 8.7.2019. He approached the learned Additional Sessions Judge, Fast Track Special Court under POCSO Act, Ludhiana praying for the grant of bail, who after hearing the parties, declined the same vide its order dated 1.10.2020. Aggrieved by the same, the petitioner has approached this Court by way of filing the present petition for grant of bail.

Learned counsel for the petitioner has vehemently contended that the petitioner has been falsely implicated in the present case. He has contended that in relation, the petitioner is brother-in-law of the victim. He has submitted that though the victim is minor, however, as per the allegations in the FIR there was no coercion on the part of the petitioner. On recovery of the victim, she was produced before the learned Magistrate, wherein, statement under Section 164 Cr.P.C. was recorded. A perusal of the same would show that there was not even whisper regarding any sexual harassment or offence committed by the petitioner and hence, the prosecution of the petitioner for the same is totally an abuse of the process of the Court. To buttress his arguments, he submits that the trial Court has already commenced with the recording of evidence and the mother of the victim and the victim already stand examined by the trial Court as PW-5 and PW-6, respectively. Copies of the testimonies are also taken on record. He also submits that both these material witnesses have not supported the case of the prosecution and thus, on the request of learned PP, they were declared hostile. He has submitted that the learned Additional Sessions Judge has declined the prayer for grant of bail simply on the ground that in case the petitioner is granted bail, there is possibility of

tampering with the witnesses, however, the material witnesses already stand examined and as they have not supported the case of the prosecution, further incarceration of the petitioner who has already undergone about three years, is totally unwarranted.

Learned State counsel has opposed the submissions made by learned counsel for the petitioner and submitted that there are specific allegations against the petitioner. He submits that the victim is minor and even if there is a consent on part of the victim, the same has not legal sanctity. However, he candidly acknowledges that the material witnesses i.e. the mother of the victim and the victim herself have been examined by the trial Court and they have not supported the case of the prosecution. He submits that out of total 19 prosecution witnesses, 9 witnesses have already been examined.

Heard.

The petitioner is behind bars since 8.7.2019 and in relation he is brother-in-law of the victim. Before recovery of the victim, she remained with the petitioner for about two weeks and on her appearance before the Magistrate, she made a statement under Section 164 Cr.P.C., which would reflect no allegations regarding sexual abuse. Besides this, during examination by the trial Court, the mother of the victim and the victim herself have not supported the case of the prosecution. A perusal of the testimonies shows that the victim deposed that she did not know about the present case. She further deposed that the accused present in Court though VC never committed any wrong act with her. She also deposed that she never made any statement to the police against the accused. On the same line, mother of the victim also deposed. Though the veracity of the allegations and counter-allegations would be evaluated by the trial Court after conclusion of the trial. However, in the

facts and circumstances, this Court finds that learned counsel for the petitioner has been able to make out a case for grant of regular bail to the petitioner. Accordingly, the present petition is allowed and the petitioner is ordered to be released on bail 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.

10.5.2022
sharmila

(RAJESH BHARDWAJ)
JUDGE

Whether Speaking/Reasoned	:	Yes/No
Whether Reportable	:	Yes/No