

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

CRM-M-42693-2021

Date of Decision: 18.11.2022

Aman Kumar

..... Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Ravi Malhotra, Advocate, for the petitioner.

Mr. Sandeep Kumar, Deputy Advocate General, 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.182 dated 22.07.2020, registered under Sections 363, 366-A, 376 IPC and Sections 3 and 4 of POCSO Act, 2012, at Police Station Moti Nagar, District Ludhiana.

As per factual matrix of the case, the present FIR was lodged by the father of the victim, wherein, it was alleged that he is doing labour work and have four children. His younger daughter i.e. the victim (name concealed) was 16 years of age and student of 7th class. On 14.07.2020, his daughter i.e. the victim was not feeling well and he alongwith his wife took her to the doctor. At about 10:00 a.m., when they were returning home his daughter went missing in the crowd and did not reach home. They searched her but failed to trace her out. On enquiry, sister of complainant Bimla told that his daughter was spotted in auto with Aman i.e. the petitioner. The present complaint was lodged for taking legal action against the culprit. On the basis of the complaint, the FIR was lodged and investigation commenced. During the investigation, the petitioner and the victim were

recovered on 29.07.2020. The petitioner was arrested and the victim was produced before the Judicial Magistrate for recording her statement under Section 164 Cr.P.C.. The Investigating Agency also tried to get her medically examined, however, she refused for the same and hence, she could not be medically examined. She made statement before the Judicial Magistrate that she went with Aman on her own free will and she did not want to go with her parents. As a result, being minor the learned Judicial Magistrate sent her to Gandhi Vanita Ashram, Jalandhar till the attaining of age of majority. The petitioner approached the Court of learned Addl. Sessions Judge, Fast Track Special Court under POCSO Act, Ludhiana for grant of bail, who, after hearing the parties, declined the same vide order dated 05.01.2021. Aggrieved by the same, the petitioner has approached this Court by way of filing the present petition for grant of bail.

It has been vehemently contended by learned counsel for the petitioner that the petitioner is a young boy and at the time of occurrence his age was 19 years. He has submitted that the petitioner and the prosecutrix were in consensual relationship, however, the prosecutrix being less than 18 years of age and their relationship not acceptable to the family of the prosecutrix, he was falsely implicated in this case by the family members of the prosecutrix. He has submitted that the prosecutrix eloped on 14.07.2020 and thereafter they remained together upto 29.07.2020. He has submitted that there is nothing to show that the petitioner has used any coercion etc. during this period on the alleged victim. He submits that the prosecutrix was produced before the learned Judicial Magistrate for recording her statement under Section 164 Cr.P.C., wherein she has emphatically deposed that she left home of her own will and she also refused to go with her parents,

resultantly, she was sent to Gandhi Vanita Ashram, Jalandhar by the Judicial Magistrate till her attaining the age of majority. He also submits that the the prosecutrix also refused for her medical examination. To strengthen his arguments, he submits that now the prosecutrix has been examined by the learned trial Court as PW-2, wherein she has not supported the case of the prosecution and on the request of learned Public Prosecutor, she has been declared partly hostile. He further submits that as the prosecution has now attained the age of the majority, the petitioner and the prosecutrix have decided to marry. He submits that now the prosecutrix is not residing in Gandhi Vanita Ashram, Jalandhar, rather she is living with the parents of the petitioner. He further submits that the parents of the prosecutrix, who are the prosecution witnesses, are not intentionally appearing before the trial Court for their examination only in order to prolong the incarceration of the petitioner. He has submitted that the petitioner has no criminal antecedents and thus, in the facts and circumstances of the present case, he deserves to be granted bail.

On the other hand, learned State counsel has opposed the submissions made by learned counsel for the petitioner and has submitted that even if it is assumed that the prosecutrix was consenting party, the same has no legal sanctity, as she was minor at the time of occurrence. He has submitted that the Investigating Agency wanted to get her medically examined after her recovery, however, she refused for the same. He submits that she was sent to Gandhi Vanita Ashram, Jalandhar until she attains the age of majority, as she had refused to go with her parents. He has submitted that now she has been examined by the learned trial Court and has not supported the case of the prosecution and has been declared partly hostile.

He further submits that the complainant and other witnesses remain to be examined. He submits that as per the instructions provided to him, the petitioner has not been involved in any other criminal case except the present case. He further submits that out of total 14 prosecution witnesses, so far only the prosecutrix has been examined.

Heard.

Evidently, the prosecutrix went missing from 14.07.2020 and she was recovered on 29.07.2020 i.e. after about 15 days. On her recovery, she was produced before the learned Judicial Magistrate and her statement under Section 164 Cr.P.C., wherein, she refused to go with her parents and hence, she was sent to Gandhi Vanita Ashram, Jalandhar. She further refused to undergo the medical examination and thus, the same could not be conducted. Thereafter, as submitted before this Court after attaining the age of the majority, she left Gandhi Vanita Ashram, Jalandhar and presently, she is said to be living with the parents of the petitioner itself. Out of total 14 prosecution witnesses, so far the prosecutrix has been examined as PW-2, who has been declared partly hostile. There is nothing on record showing that the petitioner has any criminal antecedents. The veracity of the allegations would be evaluated by the trial Court only after appreciation of the complete evidence led by both the parties. This Court would refrain itself from commenting anything on the merits of the case, however, considering the prayer for grant of bail to the petitioner, I am of the view that learned counsel for the petitioner has been able to make out a case for grant of regular bail to the petitioner. The trial would take sufficiently long time for its conclusion.

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.

		(RAJESH BHARDWAJ)
		JUDGE
18.11.2022	Whether Speaking/Reasoned :	Yes/No
sharmila	Whether Reportable :	Yes/No