

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

217+113

CRM-M-44624-2021 (O & M)

Date of decision:13.01.2022

Ajay Masih

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Aditya Pratap Singh, Advocate for the petitioner.

Mr. Prabhjot Singh Walia, AAG, Punjab.

Mr. Sandeep Sharma, Advocate for the complainant.

SUVIR SEHGAL J. (ORAL)

Heard through video conferencing.

CRM-1074-2022

Application is allowed.

Annexures P-7 to P-9 are taken on record.

Main Case

This is the first petition filed by the petitioner under Section 439 of Cr.P.C. for grant of regular bail in case FIR No.95, dated 23.07.2021 registered for offences under Sections 363/366 of IPC, 1860, (Sections 376 IPC and Section 06 of Protection of Children from Sexual Offences Act, 2012 were added later on vide GD No.48 dated 09.09.2021) and (Sections 9 and 11 of Prohibition of Child Marriage Act, 2006 were added later on vide GD No.38 dated 14.09.2021), at Police Station Sadar Pathankot, Tehsil and District Pathankot, Annexure P-1.

FIR, Annexure P-1, has been registered on the complaint given by the father of the victim on the allegation that his minor daughter has been enticed by Ajay Masih (present petitioner) on the pretext of marriage and she is missing from her paternal home since 22/23.07.2021.

Counsel for the petitioner urges that though it has been alleged that the victim is a minor, yet in her statement recorded on oath in Court, she has categorically said that her date of birth is 02.03.2001, Annexure P-8, and has attained the age of majority. Counsel has further referred to her deposition to submit that whereas in her examination-in-chief she stated that the petitioner had committed a wrongful act, subsequently when she was re-examined, she denied that any forcible act was done with her. Counsel has also highlighted the fact that the petitioner and the victim have married on 15.07.2021 and there is a child out of the wedlock. He has invited the attention of the Court to a compromise dated 13.09.2021, Annexure P-4, executed between the petitioner and the complainant. He asserts that the petitioner has an unblemished past and deserves to be released on bail as he is no longer required for custodial interrogation.

Per contra, learned State counsel upon instructions from ASI Naresh Kumar, has opposed the petition. He has referred to the status report filed by way of an affidavit of Deputy Superintendent of Police, Rural, District Pathankot, to submit that in her statement recorded under Section 164 Cr.P.C., the victim has stated that she went with the petitioner of her own accord and has solemnized marriage with him and is a willing partner in the relationship. According to the State counsel, the victim has further stated that she wants to reside with her husband.

Counsel for the complainant does not object to the grant of bail to the petitioner.

Having considered the circumstances of the case, the period of incarceration, the dispute regarding the date of birth of the petitioner and the statement of the prosecutrix, this Court is *prima facie* of the view that the involvement of the petitioner in the offence would remain debatable and the petitioner, who is in custody for the last more than 05 months would be entitled to be released on bail.

Without examining the arguments addressed by the counsel for the parties, the petition is allowed. The petitioner is ordered to be released on bail on furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate concerned.

It is clarified that any observation made hereinabove shall not be construed to be an expression of opinion on the merits of the case.

13.01.2022

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(SUVIR SEHGAL)
JUDGE

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