

**109+222 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-45265-2021 (O&M)

Date of decision : 21.02.2022

Nirmal Kaur

..... Petitioner

versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. S.S. Hira, Advocate
for the petitioner.

Ms. Sakshi Bakshi, AAG, Punjab.

RAJESH BHARDWAJ, J.

Matter has been taken up through video conferencing via Webex facility in the light of the Pandemic Covid-19 situation and as per instructions.

CRM-40392-2021

Application is allowed as prayed for.

Annexures P-7 and P-8 are taken on record.

CRM-M-45265-2021

Prayer in the petition is for grant of regular bail to the petitioner in case FIR No.130 dated 05.08.2021, under Sections 363, 366-A, 376, 506, 120-B of the IPC and Section 6 of POCSO Act, registered at Police Station Sadar, Hoshiarpur.

As per the facts of the case, present FIR was lodged by Harmesh Singh son of Malkit Singh. The crux of the FIR was that the complainant had three daughters, both the elder daughters were married. However, the youngest daughter i.e. victim (name concealed) whose date of birth is 31.08.2004 was studying in 10+2 in the Government School of

Village Naru Nangal. On 04.08.2021, his victim daughter had gone to school and they locked the house from outside and went to Hoshiarpur. On their return, they found that their daughter had not returned. They enquired from neighbourhood about their daughter as they thought that they would find her sitting in front of the door of the house but she was not there. He enquired from the relatives as well but no information regarding his daughter came forward. He sought the help of the respectable persons of the village and searched in the nearby villages as well but failed to trace her. However, it was found that one resident of their village Abhay Sharma son of Ashwani Sharma was also missing from the village since morning. As on earlier occasions as well, Abhay Sharma used to stalk complainant's daughter and used to compel her to have friendship with him. He suspected Abhay Sharma to have allured his daughter on some pretext. The request was made to take the legal action against the culprit. In pursuance to the FIR, the investigation commenced and during investigation, petitioner was arrested on 30.09.2021. She approached learned Additional Sessions Judge, Hoshiarpur praying for grant of bail, who after hearing counsel for the parties, declined the same vide order dated 06.10.2021. Aggrieved by the same, petitioner has approached this Court by way of filing the present petition for grant of regular bail.

It has been contended by counsel for the petitioner that petitioner has been falsely implicated in this FIR with the aid of Section 120-B of the Indian Penal Code as she has been nominated in the case vide DDR No.34 dated 24.09.2021. It has been contended that no role has been attributed to the petitioner and she has no concern with the main accused Abhay Sharma who has been named in the FIR. It was

further submitted that statement of the victim was recorded under Section 164 Cr.P.C. on 21.08.2021 wherein, no allegations were made against the petitioner. However, thereafter, second statement under Section 164 Cr.P.C. of the victim was recorded on 24.09.2021 wherein, she was deliberately named and attributed her role. It is vehemently contended that the petitioner has been roped in subsequently and no offence as alleged is made out against her. The investigation is complete and hence, the petitioner be granted bail.

Learned State counsel has vehemently opposed the submissions made by counsel for the petitioner. It has been contended that the victim is minor being less than 18 years of age, there is a presumption under Section 29 of the POCSO Act and hence, there is no reason to disbelieve the allegations made by the minor prosecutrix. She submits that the second statement of the victim was recorded under Section 164 Cr.P.C. on 24.09.2021. It was recorded by the prosecutrix that on 04.08.2021 she was kidnapped by accused Abhay Sharma in black colour without number car and was taken to the office of an Advocate at Hoshiarpur for the purpose of marriage, however, she being the age of minority, Pandit refused to perform the marriage. Their advocate advised to wait upto 31.08.2021. Thereafter, she was taken to the house of Nirmal Kaur i.e. the petitioner at Village Randhawa Barota, where Abhay Sharma committed rape upon her without her consent. It was further alleged by her that the co-accused Sukhi who is son of the petitioner-Nirmal Kaur arranged an Advocate of High Court for performing her marriage and her signatures were obtained forcibly on blank papers. She vehemently submits that the prosecutrix had made specific allegations against the

petitioner in the present case. The investigation has been completed and the challan has been presented in the Court of competent jurisdiction. However, charges are yet to be framed. He submits that in the facts and circumstances, no case for grant of regular bail to the petitioner is made out.

I have heard learned counsel for the parties and perused the records.

Evidently, prosecutrix is minor. The allegations against the petitioner are specifically find mention in the second statement of the victim recorded under Section 164 Cr.P.C. on 24.09.2021. It has been specifically mentioned that the victim was taken to the house of petitioner where, co-accused Abhay Sharma committed rape upon her without her consent. The investigation is complete and the charges are yet to be framed.

In the overall facts and circumstances of the case, this Court finds that no case is made out for grant of regular bail to the petitioner at this stage. Petition being devoid of any merits, is hereby, dismissed. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

(**RAJESH BHARDWAJ**)
JUDGE

21.02.2022

m. sharma

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