

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(211)

CRM-M-42943-2022
Date of Decision: 22.09.2022

Gurpreet Singh @ Gurmeet Singh @ Sanju

--Petitioner

Versus

State of UT Chandigarh & another

--Respondents

CORAM:- HON'BLE MR. JUSTICE RAJESH BHARDWAJ.

Present:- Mr. Subhash kumar, Advocate for the petitioner.

Mr. A.M. Punchhi, P.P., U.T., Chandigarh.

Mr. Ravi Dangi, Advocate for respondent no.2.

RAJESH BHARDWAJ.J (Oral)

The present petition has been filed under Section 439 Cr.P.C seeking the benefit of regular bail to the petitioner in case FIR No.57 dated 18.4.2020 under sections 376(3) IPC and section 6 of POCSO Act, registered at Police Station, Sarangpur, Chandigarh.

As per factual matrix, the FIR in question was lodged by the prosecutrix herself wherein it was alleged that she was 15 years of age. She was in relationship with Sanju i.e. the present petitioner and they solemnized marriage in Mansa Devi Temple. She alleged that she did not have any proof of the marriage and both of them were living together. During that time Sanju developed physical relations with her and thereafter she came to PGI with her mother as she was feeling pain in her stomach. On her examination the doctor found her to be pregnant. On recording her statement FIR in question was registered and the investigation commenced.

During investigation, statement of the prosecutrix under section 164 Cr.P.C was recorded. The petitioner was arrested on 18.4.2020. He approached the learned Fast Track Special Court, Chandigarh for grant of bail, however, after hearing the parties, the same was declined vide order dated 28.2.2022. Aggrieved by the same petitioner has approached this court for grant of bail.

Learned counsel for the petitioner vehemently contends that the petitioner has been falsely implicated in the present case. He submits that both prosecutrix and petitioner were in consensual relationship and they performed marriage. Thereafter, their relationship was consensual and pregnancy as mentioned in the FIR is also after performing the marriage with the petitioner. Counsel has also disputed the age of the prosecutrix. To buttress his arguments counsel submits that even in her statement recorded under section 164 Cr.P.C prosecutrix has conceded that she was in consensual relationship with the petitioner and both of them performed marriage. He submits that both the prosecutrix and her mother have been examined by the learned Trial Court as PW-1 and PW-2 respectively. He has drawn the attention of this court to the depositions of both these witnesses. He submits that prosecutrix has admitted in her statement before the Trial Court that she was in consensual relationship with the petitioner. She deposed that she delivered a baby boy and both the child and prosecutrix are living with the mother of the petitioner. Counsel submits that mother of the prosecutrix has also been examined before the learned Trial Court and she has not supported the case of prosecution and hence was declared hostile. Counsel further submits that as the material witnesses

already stand examined, possibility of the petitioner influencing them does not survive any more. Counsel submits that petitioner is behind bars for the last about 2 ½ years and he deserves to be granted the benefit of bail.

Learned counsel for the complainant has endorsed the contentions made by counsel for petitioner.

On the other hand, learned State counsel submits that there are specific allegations against the petitioner. He submits that even if it is assumed that the prosecutrix was a consenting party, still her consent has no legal sanctity as she was minor at the time of occurrence. He submits that the petitioner is a habitual offender and from the custody certificate produced by the State it is evident that petitioner has been prosecuted in a number of cases as well. However, he candidly acknowledges that both prosecutrix and her mother have been examined by the learned Trial Court and the mother of the prosecutrix has been declared hostile as she did not support the case of prosecution. He further submits that petitioner is the biological father of the child and the prosecutrix was minor at the time of occurrence. It is submitted that out of total 19 prosecution witnesses, 11 including the prosecutrix and her mother have been examined.

I have heard learned counsel for the parties at length and have gone through the records carefully.

Admittedly, petitioner is behind bars for the last about 2 ½ years. As per allegations made in the FIR both the prosecutrix and petitioner were in consensual relationship and they also performed the marriage. Thereafter, prosecutrix gave birth to a male child and she is living with the mother of the petitioner along with the child. Out of the total

19 prosecution witnesses 11 including the prosecutrix and her mother have been examined before the learned Trial Court and hence the possibility of the petitioner influencing the material witnesses does not survive any more. The veracity of the allegations levelled against the petitioner would be assessed by the Trial Court only upon conclusion of the trial. This court would refrain itself from commenting on the merits of the case, as the allegations and counter allegations would be assessed only after evaluation of the complete evidence to be led by both the sides before the Trial Court. The trial would take sufficiently long time in its conclusion.

In the totality of facts and circumstances and without making any observation on merits, present petition is allowed. Petitioner be enlarged on bail on his furnishing bail/surety bonds subject to the satisfaction of Trial Court/Duty Magistrate, concerned. Nothing stated herein shall be treated as an expression on the merits of the case.

(RAJESH BHARDWAJ)
JUDGE

22.09.2022

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Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No