

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRM-M-43638-2022 (O & M)

Date of decision:23.12.2022

Raj Kumar

...Petitioner

Vs.

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Saurabh Sharma, Advocate for the petitioner.

Ms. Ankita Ahuja, AAG, Haryana.

SUVIR SEHGAL J. (ORAL)

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.162, dated 05.02.2022 registered for the offences under Sections 363 and 366-A of IPC, 1860, however, Section 06 of the Protection of Children from Sexual Offences Act, 2012, was added later on, at Police Station Shahbad, District Kurukshetra.

Case of the prosecution is that FIR has been registered on the statement of a mother of a 15 year old girl (hereinafter referred to as “the prosecutrix”) on the allegation that she went missing from her home in the evening on 03.02.2022. She stated that she is doing the work of labour at Poultry Farm of Baldev Singh, where Raj Kumar, present petitioner, was also working and he left the work on 31.01.2022 and has enticed her daughter.

Counsel for the petitioner contends that there is a delay of 02 days in the lodging of the FIR and there are inconsistencies in the statement of the prosecutrix recorded under Section 164 of Cr.P.C. and in her testimony. He submits that in her deposition, the prosecutrix has not alleged that she was sexually assaulted. Counsel submits that the petitioner has been falsely implicated as he had an altercation with Baldev, the owner of the Poultry Farm and the complaint against him, have been lodged at his behest. Counsel submits

that both the prosecutrix and her mother-complainant, have been examined and the petitioner, who has a clean past and is in detention since 16.02.2022, deserves to be enlarged on bail.

Per Contra, learned State counsel, upon instructions, has opposed the petition and has submitted that the prosecutrix was a minor, her ossification test was conducted and she was found to be between the age of 17-18 years. While referring to the testimony of the complainant (PW-2), State counsel contends that the complainant has supported the case of the prosecution and the examining doctor has opined that possibility of sexual assault cannot be ruled out. She submits that there is no FSL report. As per her instructions, 06 out of 15 prosecution witnesses have been examined.

Having considered the submissions made by counsel for the parties, but without advertng to the merits or de-merits of the arguments addressed, this Court is *prima facie* of the view that the involvement of the petitioner in the offence would be determined by the trial court at an appropriate stage. Petitioner, who is a young man of 20 years of age and is in custody for the last more than 10 months, deserves to be enlarged on bail as the trial is likely to take time to conclude.

Petition is allowed. 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.

23.12.2022

(SUVIR SEHGAL)
JUDGE

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