

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(208)

CRM-M-48226-2021(O&M)

Date of Decision: 08.04.2022

Waseem

--Petitioner

Versus

State of Haryana

--Respondent

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

Present:- Ms. Rosi, Advocate for the petitioner.

Mr. B.S. Virk, D.A.G., Haryana.

RAJESH BHARDWAJ.J (Oral)

The present petition has been filed under Section 439 Cr.P.C for grant of regular bail to the petitioner in FIR No.106 dated 16.7.2021 registered under Section 346 IPC (later on section 346 IPC was deleted and sections 363, 366-A IPC and Section 10 of POCSO Act were added) at Police Station, Bicchor, District Nuh.

As per facts of the case, present FIR was lodged by Jakir son of Shodan. It was alleged that his sister was married and she had come to her matrimonial home. On 15.7.2021 his sister had gone to answer the call of nature. She had taken about 20 grams gold and half kg silver kada along with cash of Rs.1,50,000/-. Thereafter, his sister did not come back. It was suspected that Wasim son of Rahish had played some foul play. A prayer was made to trace out his missing sister and take action against the culprit.

The investigation commenced and on 23.7.2021 Shahid son of Wahid produced the missing girl. She was taken into custody by the police for recording her statement under Section 164 Cr.P.C. Her date of birth was found to be 16.3.2006 and thus her age as on the day of occurrence was 15 years 4 months and 8 days. Her statement under Section 164 Cr.P.C was

recorded by JMIC, Ferozepur Jhirka on 24.7.2021. She deposed that she was in talking terms with Wasim i.e. the present petitioner for about 8/9 months. She wanted to marry him but her family members had forcefully married her with some other boy against her wishes. On 16.7.2021 she had come to her matrimonial home. They both decided to run away from the house and on 16.7.2021 at about 2 AM she had gone with Wasim from her house without informing anyone. They went to Jaipur and stayed there for two days. Thereafter they went to Bikaner where they again stayed for 2 days. From Bikaner they went to Gurgaon, where police arrested them and taken them for recording their statements.

The petitioner was arrested on 3.8.2021. He approached learned Addl. Sessions Judge, Nuh for grant of bail, however, after hearing the parties, the same was declined vide order dated 26.10.2021. Aggrieved by the same petitioner has approached this court for grant of bail.

Learned counsel for the petitioner has vehemently contended that the petitioner has been falsely and frivolously implicated in the present case. She submits that the prosecutrix eloped with the petitioner on 16.7.2021 and thereafter they remained together for about 7 days. During this period they travelled by public transport and lived in public places. On her recovery, statement under Section 164 Cr.P.C was recorded wherein the prosecutrix has specifically denied any coercion from the side of the petitioner. It is submitted that the petitioner has been roped in only on account of the fact that the victim was less than 18 years of age. Even otherwise the petitioner is being prosecuted for the offence under Section 10 of POCSO Act. To buttress her arguments counsel has further submitted that the author of the FIR i.e. brother of the victim namely Jakir has been

examined before the learned Trial Court as PW-1. In his examination he has deposed that nothing wrong has ever taken place with his sister. He never filed any complaint against accused Wasim at any point of time. On seeing the accused through video conferencing he deposed that he did not do anything wrong with his sister/victim. He never kidnapped his sister. On the request of learned P.P he was declared hostile. Counsel submits that in the given circumstances prosecution is left with no other credible evidence and hence the petitioner deserves to be enlarged on bail.

On the other hand learned State counsel has opposed the submissions made by counsel for petitioner. He submits that victim is a minor and even if she has consented, the same carries no legal sanctity. He further submits that out of total 11 prosecution witnesses 5 have already been examined including the complainant. He candidly acknowledges that the complainant has not supported the case of prosecution.

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

The petitioner is behind bars since 3.8.2021. The victim and the petitioner lived together for about a week. They travelled by public transport and live in public places. Prima facie there is nothing on record to show any coercion on the part of the petitioner. During investigation, statement of the prosecutrix under Section 164 Cr.P.C was recorded, wherein she deposed that she went with the petitioner with her own free will. The author of the FIR i.e. brother of the prosecutrix has been duly examined before the Trial Court and he has not supported the case of the prosecution. The prosecutrix is already married to some other boy. Out of the total 11 prosecution witnesses 5 have already been examined. In the

overall facts and circumstances of the case, this Court finds that counsel for petitioner succeeds in making out a case for grant of bail to the petitioner.

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 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

08.04.2022

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