

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

1. CRM-M-51046-2021 Date of Decision: 20.10.2022

Sukhwinder Kumar @ Sukhwinder Singh @ Sukhi --Petitioner

Versus

State of Punjab

--Respondent

2. CRM-M-45707-2022(O&M)

Nirmal Kaur

--Petitioner

Versus

State of Punjab

--Respondent

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

Present:- Mrs. Ritu Rani wife of petitioner
Sukhwinder Kumar in person.

IO ASI Sewa Dass in person.

RAJESH BHARDWAJ.J (Oral)

CRM-39802-2022 in CRM-M-45707-2022

This is an application praying for necessary corrections in the heading of the petition and in the prayer clause by incorporating “Section 366-A IPC” in place of Section 366-N IPC and “Section 506 IPC” in place of Section 306 IPC.

In view of the averments made in the application, same is allowed. Necessary corrections as prayed for in the application are allowed to be incorporated in the heading as well as prayer clause of the petition.

Registry to carry out necessary corrections as prayed for.

Main Petitions

This common order will dispose of the aforementioned two petitions filed under Section 439 Cr.P.C seeking the benefit of regular bail

CRM-M-51046-2021 & another connected petition -2-

to the petitioners in case FIR No.130 dated 5.8.2021 under sections 363, 366-A, 376, 506, 120-B IPC and section 6 of POCSO Act registered at Police Station, Sadar Hoshiarpur, District Hoshiarpur.

As per factual matrix, the FIR in question was lodged by Harmesh Singh son of Malkit Singh, wherein it was alleged that his daughter (name concealed) whose date of birth was 31.8.2004, was studying in 10+2. On 4.8.2021 she went to school and never returned. They tried their level best but failed to search her. On their inquiry, they found that one Abhay Sharma of their locality was also missing from his house. Abhay Sharma earlier used to obstruct the way of his daughter. It was suspected that Abhay Sharma had allured his daughter and a request was made to take legal action against the culprits.

The FIR was registered and investigation commenced. During the course of investigation victim was recovered and produced before the Magistrate concerned for recording her statement under section 164 Cr.P.C. Initially she refused to undergo medical examination, however, subsequently she gave her consent for the medical examination. The present petitioners were arrested on 30.9.2021. They approached the court of learned Addl. Sessions Judge, Hoshiarpur for grant of bail, however, after hearing the parties, the same was declined vide order dated 6.10.2021. Aggrieved by the same petitioners have approached this court for grant of bail.

Wife of the petitioner is present in person and submits that the petitioners, who are her husband and mother-in-law have been falsely implicated in the present case. She submits that victim is major as on date

and she voluntarily left her home with Abhay Sharma and performed marriage with him. It is submitted that the victim approached this court by way of filing CRWP-7742-2021 seeking protection of her life and liberty and the same was allowed by this court vide order dated 16.9.2021. It is submitted that the prosecutrix also got recorded her statement under section 164 Cr.P.C wherein she completely exonerated all the accused persons named in the FIR. It is submitted that the FIR in question was lodged by the father of the victim for the reason that he did not accept the relationship of his daughter with Abhay Sharma. It is submitted that the main accused Abhay Sharma has not been arrested till date and her husband and mother-in-law have been falsely implicated on the false allegations of giving shelter to the victim. It is submitted that the allegation against her husband is that he helped the accused in engaging a lawyer. She submits that her mother-in-law is an elderly woman and has been falsely implicated only in order to settle the score. She submits that after registration of the FIR her brother-in-law (Jeth) Parminder Kumar died as he could not bear the shock of arrest of his brother and mother. She submits that petitioners are behind the bars for the last more than one year and victim has also been examined by the learned Trial Court. She has produced copy of deposition of the victim, wherein she has reiterated her stand taken in her statement recorded under section 164 Cr.P.C. It has been deposed in the statement that petitioners have no role whatsoever in enticing her away or committing rape with her. Resultantly, victim has been declared hostile on the request of learned P.P. She submits that petitioners have no criminal antecedents and they deserves to be granted the benefit of bail.

On the other hand, IO of the case is present in person and has produced the record of the case. On the query put by this court he submitted that both the petitioners are behind bars since 30.9.2021. He submits that in all there are 8 accused. The main accused is Abhay Sharma and he has been declared Proclaimed Offender. He has brought to the notice of the court that victim has exonerated all the accused in her statement recorded under section 164 Cr.P.C as well as in her statement recorded before the learned Trial Court, wherein it has been deposed that all the accused are innocent and her father has lodged a false and frivolous FIR against all of them. He submits that as per record petitioners have no criminal antecedents.

I have heard both the sides at length and have gone through the records carefully.

Admittedly, petitioners are behind bars since 30.9.2021. The prosecutrix went missing from her home on 4.8.2021 and thereafter she was recovered on 21.8.2021. Her statement under section 164 Cr.P.C was recorded, wherein she specifically deposed that her parents wanted to marry her with a widower and thus she voluntarily left her home. Thereafter she was examined by the learned Trial Court as PW-1 and a perusal of her statement would show that she has deposed that her parents got registered a false case against Abhay Sharma and other accused persons. She also deposed that Abhay Sharma never committed any wrongful act with her nor the other accused had any role in this case. She was declared hostile on the request of learned PP. There is nothing on record to show that present petitioners have criminal antecedents. The veracity of the allegations

CRM-M-51046-2021 & another connected petition -5-

levelled against the petitioners 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. Petitioners be enlarged on bail on their 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

20.10.2022

lucky

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