

CRM-M-53223 of 2021

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-53223 of 2021

Date of decision : 22.08.2022

Muskeen Ali and others

.....Petitioners

VERSUS

State of Punjab and others

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. S.K.Chaudhary, Advocate
for the petitioners.

Mr. Karunesh Kaushal, AAG., Punjab.

Mr. S.K.Arya, Advocate
for respondents no.2 to 6.

RAJESH BHARDWAJ, J. (Oral)

This is a petition filed under Section 439 Cr. P.C. for grant of regular bail to the petitioner in case FIR No. 28 dated 30.04.2019, under Sections 363, 366, 436, 427 of the IPC, registered at Police Station Sujanpur, District Pathankot.

The present FIR was lodged by Saif Ali, i.e. the uncle of the prosecutrix. The sum and substance of the allegations in the FIR is that his brother, namely, Sher Ali is residing in village Hazipur Panchayat Beharia. He is having four daughters and two sons. The date of birth of his two daughters (name concealed) are 06.12.2002 and 06.09.2006. On 30.04.2019 at 12.30 A.M., when they were sleeping, three cars came and accused with muffled faces kidnapped his two daughters. The complaint was made before the police for registration of the FIR and for taking legal action. During investigation nine accused were found to be involved in the case. The accused could not be

arrested for two years after registration of the FIR. However, all the petitioners were arrested on 30.10.2021. Petitioners approached the Court of learned Additional Sessions Judge, Pathankot praying for grant of bail, however learned Additional Sessions Judge after hearing the parties declined the same vide separate orders dated 23.11.2021.

Learned counsel for the petitioner submits that petitioners have been falsely implicated in this case. He has submitted that the relationship between the petitioners and the alleged victim was consensual. He however submits that the victim's age is less than 18 years. It is further submitted that petitioner no.1 and respondent no.3 also performed marriage and sought protection from District Court Pathankot. He submits that now petitioner no.1 and respondent no.3-victim are the parents of one child. It is submitted that the prosecution has examined the material witnesses i.e., both the victims, their mother, father and uncle i.e. author of the FIR. It is submitted that all the material witnesses have not supported the case of the prosecution and have been declared hostile and on the other hand one of the victim is already married with petitioner no.1 and they have been blessed with a child. In view of the above submission, the petitioners deserve to be granted concession of bail.

Learned State counsel while opposing this petition submits that in all there were nine accused, however petitioners could not be arrested for two years. Finally they were arrested on 30.12.2021 and the victims were also examined on the same date. It is submitted that out of twenty prosecution witnesses, five are examined and material witnesses have not supported the case of the prosecution. Learned State counsel on instructions

any prosecution in any other criminal case.

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

Admittedly, petitioners are behind the bars since 30.10.2021. Petitioners were arrested after two years from the date of occurrence. Petitioner no.1 and one of the prosecutrix remained together and blessed with a child as well. The prosecutrix having been examined by the trial Court have not levelled any allegations against the petitioners. Statement regarding abduction has been totally disowned by them. As the material witnesses have been examined who have not supported the case of the prosecution, the probability of the petitioners influencing the prosecution witnesses also do not arise. The allegations and counter allegations would be assessed by the learned trial Court only after conclusion of the trial. The trial would take sufficiently long time in its conclusion. Confining itself to the consideration of bail, this Court finds that the learned counsel for the petitioners has been able to make out a case for the grant of bail to the petitioners.

Accordingly, 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 satisfaction of Trial Court/Duty Magistrate, concerned. Nothing stated herein shall be treated as an expression on the merits of the case.

22.08.2022

rekha sharma

(RAJESH BHARDWAJ)
JUDGE