

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

CRM-M-50302-2022

Date of decision : 04.11.2022

Ashwani Kumar

....Petitioner

Versus

State of Punjab

....Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Ms. Lalita Kumari, relative of the petitioner.

Victim in person.

ASI Sewa Dass.

RAJESH BHARDWAJ, J.(ORAL)

Lawyers are abstaining from work today.

Prayer in the present petition is for grant of regular bail to the petitioner in case FIR No.130 dated 05.08.2021, under Sections 363, 366-A, 376, 506, 120-B of IPC and Section 6 of POCSO Act, registered at Police Station Sadar, Hoshiarpur, District Hoshiarpur, Punjab.

The victim (name concealed) is present in person who is duly identified by IO ASI Sewa Dass.

Adumbrated facts of the case are that the present FIR was lodged by father of the victim on 05.08.2021. It was alleged that he had three daughters and date of birth of his daughter i.e. the victim is 31st August, 2004 who was studying in 10+2. He alleged that they had gone to Hoshiarpur for taking medicine and his victim daughter was at home. On their return, they found that the daughter-victim had not returned from the school. They enquired from the neighbourhood and searched all the other possible places but failed to trace the victim. He went to school to enquire

about the same and found that the victim had not attended the school on that date. With the respectable, they enquired from the nearby villages but did not get any clue. Thereafter, they came to know that Abhay Sharma of their village was also found missing since 04.08.2021 i.e. the day when the victim went missing. Abhay Sharma @ Abhishek Sharma @ Navshok Sharma used to pressurize his daughter to have friendship with him. Though they tried to desist Abhay Sharma @ Abhishek Sharma @ Navshok Sharma from the same, however, he did not accede to their request. It was strongly suspected that Abhay Sharma @ Abhishek Sharma @ Navshok Sharma had taken his victim daughter on 04.08.2021 by enticing her on false promise. The request was made to take legal action in the same. On the statement of the complainant, the FIR was registered and investigation commenced. The victim was recovered on 20.08.2021. Thereafter, she was produced before learned Magistrate for recording her statement under Section 164 Cr.P.C. on 21st August, 2021. The victim was sent to Nariniketan being minor. Thereafter, on the request of father of the victim, her custody was given to the parents and the victim was again produced before the learned Judicial Magistrate on 24th September, 2021 for recording her second statement. It is apposite to note that in her first statement under Section 164 Cr.P.C. recorded on 21st August, 2021, the victim deposed that she left home voluntarily of her own will as her parents wanted to perform her marriage with a widower. However in her second statement recorded under Section 164 Cr.P.C. on 24th September, 2021, she deposed against the accused that she was abducted and subjected to rape. Accordingly, the investigating agencies added the relevant offence under IPC as well as under POCSO Act. The

investigating agencies tried to make efforts to arrest the accused Abhay Sharma @ Abhishek Sharma @ Navshok Sharma, however, he could not be arrested and thus, was declared Proclaimed Offender on 11.10.2022. However, the petitioner before this Court who is father of Abhay Sharma @ Abhishek Sharma @ Navshok Sharma was arrested on 30.09.2021. He approached the Court of learned Additional Sessions Judge, Hoshiarpur under Section 439 Cr.P.C. for grant of regular bail. After hearing both the sides, learned Additional Sessions Judge, Hoshiarpur declined the same vide order dated 03.12.2021. Aggrieved by the same, the petitioner approached this Court praying for grant of regular bail.

Victim who is present in person in the Court has submitted before this Court that she left home voluntarily with Abhay Sharma @ Abhishek Sharma @ Navshok Sharma and sought protection from this Court by way of filing CRWP-7742-2021 which was granted by this Court vide order dated 16.09.2021. She has submitted that though she was sent to Nariniketan being minor, however, on attaining the age of 18 years on 31st August, 2022 she performed marriage with Abhay Sharma @ Abhishek Sharma @ Navshok Sharma on 13.09.2022. She has submitted that the present FIR was lodged by her father maliciously as they opposed her relationship with Abhay Sharma @ Abhishek Sharma @ Navshok Sharma. She further submits that though in her first statement under Section 164 Cr.P.C. she deposed before the learned Judicial Magistrate that she left home voluntarily with Abhay Sharma @ Abhishek Sharma @ Navshok Sharma as her parents wanted to perform her marriage with a widower. When her custody was given to her parents, they pressurized her to depose against the petitioner and the co-accused

and hence, under their pressure, she deposed against them in her second statement under Section 164 Cr.P.C. on 24.09.2021. She submits that now she has been examined by the trial Court as PW-1 and she has not supported the case of the prosecution and thus has been declared hostile by the trial Court. She submits that Abhay Sharma @ Abhishek Sharma @ Navshok Sharma is her husband and the petitioner before this Court is her father-in-law and he be granted bail.

IO Sewa Dass is present in the Court and has produced the record of the case. He has submitted that the victim as per the prosecution, went missing from home on 04.08.2021 and thereafter, she was recovered on 20.08.2021. He submits that they produced the victim before learned Judicial Magistrate on 21.08.2021. He has submitted that the case was investigated. Challan was presented and the petitioner was arrested on 30.09.2021. He has submitted that in all there are four accused, out of which, the main accused Abhay Sharma @ Abhishek Sharma @ Navshok Sharma has been declared Proclaimed Offender and rest of two accused namely Avinash Kumari and Deepak Kumar @ Deepak Bhatia have been granted anticipatory bail by this Court vide order dated 09.05.2022 and 24.08.2022 respectively. He has also submitted before this Court that the victim who is present in person in the Court has been examined by the trial Court as PW-1 and she has not supported the case of the prosecution. He has produced photocopy of statement of PW-1-victim which shows that she has not supported the case of the prosecution and was declared hostile. He also submits that as per the record, the date of birth of the victim is 31.08.2004. He also submits Abhay Sharma is also known by the name Abhishek Sharma and

Navshok Sharma. He submits that out of 22 prosecution witnesses, 01 witness i.e. victim has already been examined by the trial Court. He has submitted that as per the record, the petitioner is not involved in any other case.

Heard.

Admittedly, the petitioner is father of the main accused Abhay Sharma @ Abhishek Sharma @ Navshok Sharma who is PO. The petitioner is behind bars since 30.09.2021. The victim who is present in the Court along with relative of the petitioner has submitted before this Court that she performed marriage with Abhay Sharma @ Abhishek Sharma @ Navshok Sharma on 13.09.2022 without any coercion and voluntarily and as she is major as on date. There is nothing on record to show that the petitioner has any criminal antecedents. In all there are four accused in this case, out of which, two of the accused have already been granted anticipatory bail by this Court vide orders dated 09.05.2022 and 24.08.2022. Just because son of the petitioner Abhay Sharma @ Abhishek Sharma @ Navshok Sharma could not be arrested by the investigating agencies till date, could not be a ground for not considering the bail of the petitioner.

The trial of the case will take sufficient long time. The veracity of the allegations would be assessed by the trial Court on appreciation of the evidence led by respective parties. The Court cannot ignore the fact that the victim who is present in person has not supported the case of the prosecution. The Court would refrain itself from commenting anything on the merits of the case. Accordingly, the present petition is allowed and the petitioner is ordered to be released on bail on

his furnishing bail/surety bonds to the satisfaction of the concerned trial Court/Duty Magistrate. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

04.11.2022
m. sharma

(RAJESH BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No