

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(226)

CRM-M-50218-2022
Date of Decision: 07.11.2022

Tara Chand

--Petitioner

Versus

State of Punjab

--Respondent

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

Present:- Ms. Sushma daughter of the petitioner
in person.

ASI Bhajan Lal in person.

RAJESH BHARDWAJ.J (Oral)

Lawyers are abstaining from work today.

The present petition has been filed under Section 439 Cr.P.C seeking the benefit of regular bail to the petitioner in 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 Hosiarpur, District Hoshiarpur.

In the head note, the present petition has been mentioned as first petition for bail, whereas, as per office note first petition bearing CRM-M-4805-2021 filed by the petitioner was dismissed on 11.7.2022. In these circumstances present petition be treated as second petition filed for the grant of regular bail.

Daughter of the petitioner namely Sushma is present in person and is duly identified by ASI Bhajan Lal.

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 respectables, 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 Abhay Sharma that she was abducted and subjected to rape. Accordingly, the investigating agencies added the relevant offence under IPC as well as under POCSO Act.

Daughter of the petitioner namely Sushma, who is present in person submits that his father is aged about 55 years and he was not even named in the FIR. He was nominated as accused in this case after the statement of the prosecutrix under section 164 Cr.P.C was recorded. She submits that the only allegation against her father, who is Lambardar of the village is that he threatened and forced the prosecutrix to suffer statement in the court. Co-accused Ashwani Kumar has already been released on regular bail by this court vide order dated 4.11.2022 passed in CRM-M-50302-2022. It is submitted that the petitioner is in custody since 30.9.2021. It is further submitted that petitioner has no criminal antecedents and hence he may be granted bail.

ASI Bhajan Lal 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 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, petitioner is behind bars since 30.09.2021. As mentioned in order dated 4.11.2022 passed in CRM-M-50302-2022 moved for regular bail by co-accused Ashwani Kumar victim had submitted before this Court that she performed marriage with Abhay Sharma @ Abhishek Sharma @ Navshok Sharma on 13.09.2022 without any coercion and voluntarily on attaining majority. 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. Third accused Ashwani Kumar was also granted bail vide order dated 4.11.2022.

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 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.

(RAJESH BHARDWAJ)
JUDGE

07.11.2022

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