

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(207)

CRM-M-59357-2022
Date of Decision:23.12.2022

Anish

--Petitioner

Versus

State of Haryana

--Respondent

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

Present:- Mr. Anil Kumar Malik, Advocate for the petitioner.

Mr. Kirpal Singh, AAG, Haryana.

RAJESH BHARDWAJ.J (Oral)

The present petition has been filed under Section 439 Cr.P.C seeking the benefit of regular bail to the petitioner in case FIR No.438 dated 15.7.2021 under sections 363, 366-A IPC and Section 6 of POCSO Act registered at Police Station, Samalkha, District Panipat.

As per factual matrix, a complaint was lodged by the complainant, who is father of the victim, wherein it was alleged that he was working as a labourer in the Goyal Bricks Batta Company. On 12.6.2021 Nafish son of Salim enticed away his daughter i.e. the victim. Her age was stated to be 17 years. A request was made to take legal action against the culprit.

The FIR in question was lodged and investigation commenced. The victim was recovered on 28.2.2022 i.e. after about 8 months of the incident. She was produced before the learned Magistrate for recording her statement under Section 164 Cr.P.C and was also medically examined. The petitioner was arrested on 28.2.2022 itself. He approached the learned Addl.

Sessions Judge, Fast Track Court (POCSO), Panipat for grant of bail, however, after hearing the parties, the same was declined vide order dated 21.11.2022. Aggrieved by the same petitioner has approached this court for grant of bail.

Learned counsel for the petitioner vehemently contends that the petitioner is a young boy of about 22 years of age, who was in consensual relationship with the victim and their relationship was not acceptable to the family of the victim. Hence, he has been falsely implicated in the present case by the father of the victim. He submits that the victim went missing from her home on 12.6.2021 and thereafter she was recovered after about 8 months i.e. on 28.2.2022. It is submitted that during this period both the victim and petitioner lived together in public places and travelled by public conveyance. It is submitted that there is nothing on record to show that there was any coercion on the part of the petitioner. Counsel submits that in her statement recorded under section 164 Cr.P.C victim deposed that she left her home voluntarily with the petitioner and they performed marriage as well on the same day. To strengthen his arguments counsel submits that victim and her father have been examined as PW-2 and PW-3 respectively by the learned Trial Court and both these witnesses did not support the case of prosecution and hence were declared hostile on the request made by learned P.P. Counsel submits that in the facts and circumstances of the case petitioner deserves to be granted benefit of bail. He has further submitted that the petitioner before this court is known by the name of Anish @ Nafis.

On the other hand, learned State counsel on instructions from PSI Gaurav Singh submits that there are specific allegations against the petitioner. He submits that the victim went missing from her home and thereafter she was recovered from the company of the petitioner. He submits that even if it is assumed that the victim was a consenting party, her consent has no legal sanctity in the eyes of law, she being a minor at the time of occurrence. It is submitted that out of the total 12 prosecution witnesses 3 already stand examined by the learned Trial Court including the victim and her father, who have not supported the case of prosecution. He further submits that as per information provided to him petitioner is not involved in any other case.

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

Admittedly, the victim left her home on 12.6.2021 and thereafter she was recovered after about 8 months i.e. on 22.8.2022 from the company of the petitioner. Though, the victim may be minor at the time of occurrence, however, this court cannot ignore the fact that she remained with the petitioner for about 8 months in public places. In her statement recorded under section 164 Cr.P.C victim deposed that she left her home voluntarily with the petitioner. Thereafter in her examination before the learned Trial Court as PW-2 she did not support the case of prosecution and was declared hostile. Similarly her father was also declared hostile as he also did not support the case of prosecution. There is nothing on record to show that petitioner has any criminal antecedents. The veracity of the allegations levelled against the petitioner 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. Petitioner be enlarged on bail on his 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

23.12.2022

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