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

CRM-M-6003-2023 (O&M)

Date of decision : 03.05.2023

Samim**.....Petitioner**

versus

State of Haryana and others**..... Respondents****CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ*********

Present :- Mr. A.S. Shera, Advocate
for the petitioner.

Mr. Kirpal Singh Thakur, AAG, Haryana.

Mr. Mazlish Khan, Advocate and
Mr. Anil Kumar, Advocate
for respondents No.2 and 3.

*********RAJESH BHARDWAJ, J. (Oral)**

This is the third petition filed by the petitioner praying for grant of regular bail in case FIR No.0341 dated 18.10.2021, under Sections 363, 366-A of IPC, registered at Police Station Punhana, District Nuh, Haryana.

Succinctly, the facts of the case are that the statement was made by father of the victim namely, Maksood wherein it was alleged that his daughter i.e. victim (name concealed) was 16 years of age and on 30.09.2021, she went to the jungle side to bring fodder for animals, however, did not return. They tried their level best to search her but failed in tracing her out. On 03.10.2021, the applicant came to know that the accused persons had kidnapped his daughter. He went to their house and requested them to return his daughter. However, they avoided the same on

one pretext or the other. Request was made to take the legal action against the accused persons. On the basis of complaint, formal FIR was registered and investigation commenced. During investigation, she was recovered and was produced before the learned JMIC, Ferozepur Jhirka and her statement under Section 164 Cr.P.C. was recorded. Petitioner was arrested on 18.10.2021. He approached the Court of learned Additional Sessions Judge, Nuh praying for grant of regular bail. However, the same was declined. Thereafter, the petitioner approached this Court twice praying for grant of bail, however, the petitions were declined. Petitioner approached the Court of learned Sessions Judge, Nuh again praying for grant of bail. However, the same was declined by learned Sessions Judge, Nuh vide his order dated 19.01.2023. Hence, petitioner has approached this Court by way of this third petition praying for grant of regular bail.

It has been vehemently contended by counsel for the petitioner that at the time of consideration of his earlier two petitions, all the documents were not produced before this Court. Even otherwise, custody of the petitioner and investigation was also at threshold and hence, his bail petitions were declined. However, now the petitioner has already suffered incarceration of more than 1½ years and thus, due to the change in circumstances, he has a fresh ground for approaching this Court by way of present petition. It has been contended by counsel for the petitioner that the petitioner is a young boy of 21 years of age whereas, the victim was also of 19 years of age at the time of occurrence as per her statement recorded under Section 164 Cr.P.C and other appended documents. He submits that father of the complainant has wrongly given her date of birth only in order to show her minor whereas, the prosecutrix

was more than 18 years of age at the time of occurrence. He submits that after recovery, she was produced before the Magistrate for recording her statement under Section 164 Cr.P.C. and victim has specifically deposed that she was in love affair with the petitioner and wanted to perform marriage with him but her family members were against the same. She deposed that on 27.09.2021 at about 02:00 AM in the night, they performed marriage and thereafter, both of them left home without informing anyone. She deposed that she stayed for three days in Ballabhgarh and thereafter she went to Chandigarh and they performed marriage as per Muslim rites and rituals and from that day onwards they were living as husband and wife. She deposed that she was happy with the marriage performed by her with the petitioner. He submits that after recovery, her custody was given to the parents and thereafter, under their pressure, she changed her version. He submits that as per school leaving certificate, the date of birth of her younger sister is shown to be 25.08.2005 whereas, as per her school leaving certificate, date of birth of the victim has been shown to be 10.04.2005 which means there is only 04 months of difference between both the sisters. He has further drawn the attention of this Court to the document which is said to be Jaaga Ceremony performed under the Muslim Law wherein the date of birth of the victim has been shown to be 02.11.2001. He has submitted that in view of these documents, date of birth of the victim is seriously doubtful. He submits that even otherwise, now the investigation is complete and charges are also framed and prosecutrix has already been examined-in-chief. He also submits that as per the instructions the victim has been married with some another boy by her family. He submits that in the facts

and circumstances of the case, petitioner deserves to be granted bail.

Learned State counsel, on instructions from ASI Navneet Singh, has opposed the submissions made by counsel for the petitioner. He has submitted that as per case of the prosecution, victim is being less than 18 years of age, was minor at the time of occurrence. He submits that the documents relied upon by the petitioner are totally a subject matter of trial and no conclusion can be drawn on the same at this stage. He submits that out of 10 prosecution witnesses, 02 witnesses have been examined and the examination-in-chief of the prosecutrix has also been recorded. He submits that now the complainant has filed application under Section 319 Cr.P.C. for summoning additional accused to face trial along with the accused.

I have heard counsel for the parties and perused the record.

Evidently, petitioner who is 21 years of age, is behind bars since 18.10.2021. As per the case of prosecution, prosecutrix left home on 30.09.2021 and thereafter, she was recovered after about 18 days. As per her statement recorded under Section 164 Cr.P.C., she remained in public places throughout along with the petitioner and had been travelling in public conveyance. There is nothing on record to show that there was any coercion used by the petitioner or any resistance shown by the prosecutrix. It is a matter of evidence whether the prosecutrix was major or not at the time of occurrence. This Court would refrain itself from commenting anything on the merits of the case. As submitted by learned State counsel, out of 10 prosecution witnesses, 02 witnesses have been examined. There is nothing on record to show that the petitioner has any other criminal antecedents.

The veracity of the allegations would be assessed only after the conclusion of the trial and on the appreciation of evidence to be led by both the parties before the trial Court. The trial of the case will take sufficiently long time. Keeping in view the arguments raised by both the sides and perusing the record, this Court is of the opinion that learned counsel for the petitioner succeeds in making out a case for grant of regular bail. 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.

03.05.2023
m. sharma

(RAJESH BHARDWAJ)
JUDGE

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