

In the High Court of Punjab and Haryana at Chandigarh

CRM-M-6217 of 2023

Date of Decision: 6.2.2023

Navshok @ Abhay Sharma

---Petitioner

versus

State of Punjab

---Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. Surinder Thakur, Advocate
for the petitioner

Mr. Amish Sharma, AAG, Punjab

JAGMOHAN BANSAL, J. (ORAL)

Through instant petition under Section 482 of Code of Criminal Procedure, 1973, the petitioner is seeking quashing of order dated 11.10.2022 (Annexure P-16) vide which the petitioner has been declared proclaimed offender by Additional District and Sessions Judge, Hoshiarpur 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 Hoshiarpur, District Hoshiarpur

Case of prosecution, as per FIR, is that Harmesh Singh son of Malkit Singh lodged a complaint alleging that he has three daughters. Ramandeep Kaur is youngest one. Abhay Sharma @ Abhishek Sharma @ Navshok Sharma son of Ashwani Kumar Sharma used to stop his daughter while she was going to school. On

4.8.2021, he had taken away his daughter Ramandeep Kaur. The petitioner could not be arrested, however, challan was presented. Trial court vide impugned order dated 11.10.2022 has declared the petitioner as proclaimed offender.

The parents of the present petitioner were arrested and prosecutrix was recovered. Regular bail of Ashwani Kumar Sharma, father of the petitioner came up for consideration before this Court (CRM-M- 50302 of 2022) and this Court vide order dated 4.11.2022 ordered to release Ashwani Kumar Sharma on bail. The victim, during pendency of the above said petition, appeared before the court and made a statement. This Court has recorded this fact in the order dated 4.11.2022 which is reproduced hereinbelow:-

“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.”

The prosecutrix had confirmed her marriage with the petitioner. The statement of the prosecutrix was recorded before the trial court and she did not support case of the prosecution. The prosecutrix has been declared hostile. The date of birth of the prosecutrix as per record is 31.8.2004.

Learned counsel for the petitioner inter alia contends that prosecutrix and petitioner had already performed marriage and she is on her family way. The police authority at the behest of complainant had lodged second FIR on the same set of allegations which is abuse of process of law. The petitioner is ready to join investigation and face proceedings. There is no possibility of flee from justice. The

petitioner due to arrest of family members and registration of second FIR against him and family members could not appear before the trial court. He has performed marriage and he is not a man of criminal bent of mind.

Notice of motion.

On the asking of Court, Mr. Amish Sharma, AAG, Punjab, who is present in court on advance notice, accepts notice on behalf of State-respondent and does not dispute the factual position.

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

Intent of arrest and reason of denial of bail is to secure the appearance of the accused at the time of trial. A person who seeks to be liberated must take judgment and serve sentence in the event of his conviction. The nature of the crime charged, severity of punishment prescribed, prime facie available evidences, history & background of the accused may indicate that any amount of bond and surety is not going to secure presence of accused, at the time of conviction.

Keeping in mind:

- (i) The object of cancellation of bond or declaration of anyone as proclaimed offender/person is to secure his presence. The petitioner has come forward to face trial and undertakes to appear before trial court on each and every date, thus ,his presence would meet ends of justice;
- (ii) The Petitioner is ready to furnish bond/surety to the satisfaction of the trial court;
- (iii) The Petitioner is not involved in any other offence;
- (iv) Co-accused(s) has already been granted bail;

- (v) The petitioner is resident of Hoshiarpur and trial is pending at Hoshiarpur, thus jurisdictional court and police authorities have direct access over the activities of the petitioner.
- (vi) The prosecutrix has confirmed the factum of her marriage with the petitioner;
- (vii) Statement of the prosecutrix has been recorded and she has turned hostile;
- (viii) Trial is pending since 2021 and petitioner is ready to face trial, thus, no prejudice is going to cause to prosecution or complainant;

this court is of the considered opinion that present petition deserves to be allowed and accordingly allowed. Orders dated 11.10.2022 (Annexure P-16) is set aside and the petitioner is directed to appear before learned Trial Court on or before 10.3.2023. On the petitioner putting in appearance before the trial court, the trial court shall release him on bail on his furnishing bail bonds to its satisfaction. .

Disposed of in above terms.

(JAGMOHAN BANSAL)
JUDGE

6.2.2023

paramjit

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No