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

CRM-M-7249-2022

Date of decision : 25.07.2023

Junaid Ahmed**.....Petitioner****versus****State of Haryana****..... Respondent****CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ*********

Present :- Mr. Karan Singh, Advocate
for the petitioner.

Ms. Upasana Dhawan, AAG, Haryana assisted by
ASI Anita, PS Pinjore.

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

Petitioner has filed this second petition praying for grant of regular bail in case FIR No.79 dated 04.03.2021 under Sections 363, 366-A, 34, 368, 376 of IPC and Section 6 of Protection of Children from Sexual Offences Act, 2012, registered at Police Station Pinjore, District Panchkula.

Adumbrated facts of the case are that the complaint was made by mother of the victim (name concealed). It was alleged that her elder daughter was 18 years of age, younger daughter was 15 years of age and younger son Vansh was 11 years of age. Her husband used to drive three-wheeler. It was alleged that she used to take the goats for grazing and her daughter victim used to bring tea for her. On the date of occurrence i.e. 04.03.2021 at about 05:15 PM, she saw two boys taking her daughter in the car and her daughter was shouting. She came back home and enquired from her elder daughter who informed that the victim had already gone to serve her

tea. After realizing the circumstance, she went along with her husband at Police Station and lodged the complaint with a request to take legal action in the case. On the basis of the complaint, formal FIR was registered and investigation commenced. During investigation, the victim was recovered from Saharanpur on the next day i.e. 05.03.2021. She was medico legally examined and was produced before the Magistrate for recording her statement under Section 164 Cr.P.C. on 08.03.2021. Her statement under Section 164 Cr.P.C. was recorded thrice. Petitioner was arrested on 08.03.2021. He approached the Court of learned Additional Sessions Judge, Panchkula praying for grant of bail, however, after hearing counsel for the parties, the same was declined vide order dated 25.01.2022. Aggrieved by the same, petitioner on earlier occasion approached this Court by way of filing CRM-M-22071-2021, however, the same was dismissed as withdrawn by this Court vide order dated 30.07.2021. Hence, the petitioner is before this Court by way of filing this second petition.

It has been contended by counsel for the petitioner that the petitioner has been falsely and frivolously implicated in this case simply because the victim was less than 18 years of age. He submits that the victim was allegedly abducted from her home on 04.03.2021 whereas, she was recovered from Saharanpur on the very next day i.e. 05.03.2021 from the public place. He submits that during this period, the victim throughout remained in the public place and was travelling in the public conveyance and there is nothing on record to show that there was any coercive action done by the petitioner. He has further submitted that the statement of the prosecutrix under Section 164 Cr.P.C. was recorded thrice and every time, she had been changing her statement. He submits that now the victim has

also been examined by the trial Court as PW-1 and she has levelled no

allegation regarding the physical relationship by the petitioner. She rather deposed before the Court that she did not know the petitioner. He submits that even otherwise, the material witnesses already stand examined and there is no probability that the petitioner can influence the prosecutrix or other material witnesses of the prosecution. He submits that the petitioner has no criminal antecedents and he is behind bars since the date of his arrest and hence, he deserves to be granted regular bail.

Learned State counsel, on the other hand, has opposed the submissions made by counsel for the petitioner. She submits that even if it is assumed that the prosecutrix had consented, the same would have no legal sanctity as the prosecutrix is admittedly about 15 years of age and thus, being minor, there is no question of any consent given by the prosecutrix. She submits that as per the evidence collected, the presence of the petitioner was also proved at the place of occurrence at the relevant time as per the call details collected by the investigating agency. She however, submitted that at the time of recovery, the prosecutrix was found impregnated and thus, the DNA of the foetus was conducted which matched with the co-accused Mohammad Asif. She submits that the prosecutrix and other material witnesses have supported the case of the prosecution. She further submits that in all there are 28 prosecution witnesses, out of which, 08 witnesses already stand examined. She has further submitted on instructions from ASI Anita, PS Pinjore that the petitioner is not involved in any other criminal case except the present case.

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

Evidently, the prosecutrix was abducted from home on

04.03.2021 and she was recovered on the next day i.e. 05.03.2021 from

Saharanpur. Her statement under Section 164 Cr.P.C. was recorded thrice and as submitted before this Court, she had taken different stands in her statements. She has been examined by the trial Court as PW-1 wherein she has made allegations regarding the physical relationship qua the co-accused. So far petitioner is concerned, she also deposed that she did not know Junaid Ahmed (petitioner). As submitted before this Court, out of 28 prosecution witnesses, 08 witnesses already stand examined including the prosecutrix and the complainant. There is nothing on record to show that the petitioner has any 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. This Court would refrain itself from commenting anything on the merits of the case. 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.

25.07.2023
m. sharma

(**RAJESH BHARDWAJ**)
JUDGE

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