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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-9949-2023 (O&M)

Date of decision : 17.08.2023

Mohammad Arif

.....Petitioner

versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Jasdeep Singh Walia, Advocate
for the petitioner.

Ms. Akshita Chauhan, DAG, Punjab.

RAJESH BHARDWAJ, J. (Oral)

CRM-33273-2023

Application is allowed as prayed for.

Annexures P-4 & P-5 are taken on record.

CRM-M-9949-2023

This is the second petition praying for grant of regular bail to the petitioner in case FIR No.341 dated 14.06.2022 under Sections 363, 366-A of IPC (Sections 6, 17 of POCSO Act, 2012, Section 66-C and 66-D of Information Technology Act, 2000 and Section 12 of Haryana Prevention of Unlawful Conversation of the Religion Act, 2022, Sections 467, 468, 471, 420, 120-B of IPC added later on) registered at Police Station Mujessar, District Faridabad, Section 6 of POCSO Act, 2012, Sections 66-C and 66-D of Information Technology Act, 2000 and Section 12(3) of Haryana Prevention of Unlawful Conversation of the Religion Act, 2022, including under Section 376 IPC framed against co-accused-

Irshad.

Succinctly, facts of the case are that the complaint was lodged by Anup son of late Azad Singh. It was alleged that he had come to Faridabad along with his niece i.e the victim (name concealed) who was 16½ years of age. He noticed number of times Irshad roaming in front of their home and he used to talk with his niece i.e. the victim. On the intervening night of 13/14.06.2022 at about 01:00 AM, he found his niece missing from her bed. They tried to search her but failed to find her. It was suspected that Irshad had allured his niece away with the intention to perform marriage. Request was made to take legal action. On the basis of complaint, formal FIR was registered and investigation commenced. During investigation, the victim was recovered on 10.07.2022. Statement of the victim was recorded under Section 164 Cr.P.C. and she was medically examined. Co-accused Irshad was arrested on 10.07.2022. During his interrogation, name of the petitioner also surfaced and thus, he was also nominated as an accused. Subsequently, petitioner was arrested on 13.07.2022. He approached the Court of learned Additional Sessions Judge, Fast Track Special Court, Faridabad. However, the same was declined and thus, the petitioner on the earlier occasion approached this Court by way of filing CRM-M-47139-2022, however, the same was allowed to be dismissed as withdrawn vide order dated 05.12.2022. Petitioner thereafter again approached learned Additional Sessions Judge, Fast Track Special Court, Faridabad, however, after hearing counsel for the parties, the same was declined vide order dated 14.12.2022. Hence, petitioner is before this Court by way of filing the present second petition praying for grant of regular bail.

Learned counsel for the petitioner has vehemently contended that the petitioner has been falsely implicated in this case. He submits that petitioner is not even named in the FIR. He submits that the petitioner has been named in the FIR on the basis of disclosure statement of co-accused namely, Irshad. He submits that in the statement of the victim under Section 164 Cr.P.C., petitioner is not named. He has also submitted that the only allegation against the petitioner as per the disclosure statement of co-accused is that he forged the Aadhar Card of the victim by showing her to be major in order to get her married with co-accused and also depicted her as Muslim though she is stated to be Hindu by religion. He submits that the allegations are without any evidence on record. He submits that even otherwise the victim and the complainant both have been examined and the apprehension of the petitioner tampering with the prosecution evidence do not survive any more. He submits that petitioner has no criminal antecedents and he is behind bars since the date of his arrest. Thus, in the facts and circumstances of the case, petitioner deserves to be granted regular bail.

Per contra, learned State counsel has opposed the submissions made by counsel for the petitioner. She, on instructions from ASI Sanjeet, 333, P.S. Mujessar, District Faridabad has submitted that the victim/prosecutrix in the present case is less than 18 years of age and thus a minor. She submits that there are specific allegations of forging the Aadhar card of the prosecutrix and thus, she has been illegally shown as a major in order to perform her marriage without her consent with the co-accused. She submits that out of 22 prosecution witnesses, victim and the complainant have been examined by the trial Court and both have supported the case of the prosecution. However, she submits that as per the

instructions, petitioner has no criminal antecedents.

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

Evidently, the prosecutrix went missing from her home on the intervening night of 13/14.06.2022. Thereafter, she was recovered on 10.07.2022 i.e. after about 27 days, she was recovered. There is nothing on record to show that the petitioner has any criminal antecedents. As submitted before this Court neither the petitioner was named in the FIR nor there was any allegation levelled in the statement of the prosecutrix recorded under Section 164 Cr.P.C. The victim and the complainant both have been examined by the trial Court.

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.

17.08.2023
m. sharma

(RAJESH BHARDWAJ)
JUDGE

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