

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

CRM-M-10495-2023

Date of Decision: 09.03.2023

Vicky

..... Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Ashok Bhardwaj, Advocate, for the petitioner.

Mr. Karunesh Kaushal, Assistant Advocate General, Punjab.

Rajesh Bhardwaj, J. (ORAL)

Prayer in the present second petition is for the grant of regular bail to the petitioner in a case FIR No.186 dated 29.08.2021, registered under Sections 9, 10, 11 of Prohibition of Child Marriage Act, 2006 and Sections 376(3), 370-A, 506, 120-B IPC (Sections 4 and 6 of POCSO, 2012 added on 04.09.2021) at Police Station City Sunam, District Sangrur.

Succinctly, the facts of the case are that Zero FIR was lodged at Rohtak. It was alleged that on 27.08.2021 at about 5:45 pm, a call was received at No.112 at the Station and before that a call at No.181 was also received at the helpline of Child Welfare Department and complaint made by the officer of the Child Welfare Department. It was informed that a girl i.e. the victim (name concealed), who was 13 years old, was kept illegally at village Sunarian after her marriage, as she was not happy, and she should be released. On receiving information, Head Constable Anita reached the said village and recovered the victim girl from Krishan son of Ram Niwas. On 28.08.2021, she was produced before the CWC and her counselling was done and during her counselling her age was found to be 14 years 07 months as per the Aadhar Card and it was found that her marriage was

performed forcibly. On the basis of this, Zero FIR was registered, which was later on transferred to the Police Station City Sunam, District Sangrur. The statement of the complainant, namely Sonu was recorded. On the registration of the formal FIR, the investigation commenced and during the investigation, complicity of the petitioner was also found. He was arrested on 08.09.2021. The petitioner approached the Court of learned Addl. Sessions Judge, Sangrur for grant of bail, who, after hearing the parties, declined the same vide order dated 23.11.2021. Aggrieved by the same, the petitioner has approached this Court on the earlier occasion by way of filing CRM-M-52518-2021, which was allowed to be withdrawn on 07.03.2022. Hence, the petitioner has approached this Court second time by way of filing the present petition for grant of bail.

It has been vehemently contended by learned counsel for the petitioner that the petitioner has been falsely implicated in the present case. He has submitted that the petitioner was not named in the FIR, however, he was deliberately implicated in this case during the investigation. He has submitted that the allegations of performing marriage with the prosecutrix, who was of the age of minority, was against co-accused Krishan, who was not even arrested till date, but the petitioner was arrested on the false and frivolous allegations that he alongwith his wife facilitated the marriage of the victim with Krishan. He submits in all there were 6 accused named in the FIR, out of which only the petitioner has been arrested and remaining five accused have not been arrested till date. He submits that the petitioner is behind the bars since 08.09.2021. He has submitted that after the investigation the challan was presented and the charges were framed. He has submitted that the prosecutrix/victim had been examined before the trial

Court as PW-1 and the complainant, who is the elder sister of the prosecutrix had been examined as PW-2. He has drawn the attention of this Court to their deposition before the trial Court, wherein they have specifically deposed that they could not identify the accused Vicky produced in Court, thus, both of them had been declared hostile. He has submitted that the victim and the complainant had themselves not supported the case of the prosecution, thus, false implication of the petitioner is writ large and hence, further incarceration of the petitioner is totally unwarranted. He has submitted that the petitioner has no criminal antecedents and thus, he deserves to be granted bail.

On the other hand, learned State counsel has opposed the submissions made by learned counsel for the petitioner and has submitted that the victim in this case is hardly 15 years of age and thus, being less than 18 years of age, even if she was consenting party, would be of no legal sanctity. It is submitted that though the petitioner was not named in the FIR, however, his complicity was established during the investigation. He submits that remaining four co-accused are yet to be arrested. However, he candidly acknowledges that the prosecutrix and the complainant have not supported the case of the prosecution as they failed to identify the petitioner. He submits that out of total 25 prosecution witnesses, 2 witnesses stands examined. He submits that as per the instructions received from ASI Darshan Singh, the petitioner has no criminal antecedents.

Heard.

Evidently, the victim in this case is about 15 years of age. The petitioner was not named in the FIR, however, he was named in the case during the investigation. The prosecutrix was examined before the trial Court as PW-1 and the complainant as PW-2. A perusal of their deposition

would show that they refused to identify the petitioner in the Court and thus, on the request of learned Additional PP, they were declared hostile. The prosecutrix and the complainant already stands examined, who have not supported the case of the prosecution and thus, the petitioner is not in a position to influence the victim and the complainant. There is nothing on record to show that the petitioner is involved in any other criminal case except the present case. This Court would refrain itself from commenting anything on the merits of the case, however, considering the prayer for grant of bail to the petitioner, I am of the view that learned counsel for the petitioner has been able to make out a case for grant of regular bail to the petitioner. The trial would take sufficiently long time for its conclusion.

Accordingly, the present petition is allowed and the petitioner is ordered to be released on bail 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.

09.03.2023			(RAJESH BHARDWAJ)
sharmila			JUDGE
	Whether Speaking/Reasoned	:	Yes/No
	Whether Reportable	:	Yes/No