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

CRM-M-14436-2023

Date of decision : 15.05.2023

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

Present :- Mr. G.S. Dhillon, Advocate
for the petitioner.

Mr. B.S. Virk, Senior DAG, Haryana.

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

Petitioner has approached this Court by way of this present second petition praying for grant of regular bail in case FIR No.521 dated 11.09.2021, under Section 346 of IPC (Sections 363, 366-A, 376, 506 of IPC and Section 6 of POCSO Act added later on), registered at Police Station Pundri, District Kaithal.

As per the facts of the case, the missing report was lodged on the statement of Mukesh Kumar wherein, it was alleged that his daughter-victim (name concealed) was at home till 07:00 PM but after 07:30 PM, she left without informing anyone. They tried their best to search her but failed in tracing her out. It was requested that his daughter be searched. On the basis of complaint, formal FIR was registered under Section 346 of IPC and the investigation commenced. During investigation, the police recovered the prosecutrix-victim on 19.09.2021 from Pundri and she was medically examined and her statement under Section 164 Cr.P.C. was

recorded on 19.09.2021. On the basis of the same, petitioner was arrested by the police on 20.09.2021. He approached the Court of learned Additional Sessions Judge, Special Court, Kaithal praying for grant of bail. However, after hearing counsel for both the sides, learned Additional Sessions Judge, Special Court declined the same vide order dated 19.01.2022. Aggrieved by the same, petitioner earlier approached this Court by way of filing CRM-M-13096-2022. However, the same was allowed to be dismissed as withdrawn vide order dated 01.04.2022. Hence, the petitioner has approached this Court by way of present second petition praying for grant of regular bail.

Learned counsel for the petitioner has vehemently contended that the petitioner is a teenager of 18 years of age and so is the prosecutrix. He has submitted that both the prosecutrix and the petitioner came into relationship through social media and they fell in love with each other. He has submitted that the petitioner belongs to Himachal Pradesh and as per case of prosecution, he submits that during investigation, statement of the prosecutrix was recorded under Section 164 Cr.P.C. on 19.09.2021 wherein, she herself deposed that both of them had decided to meet and thus, the petitioner came from Mandi to Pundri bus-stand on 11.09.2021. It was submitted by her that both of them decided to run away. It is submitted that the prosecutrix went missing from her home on 11.09.2021 and thereafter, she was recovered on 19.09.2021 i.e after about 08 days. It is submitted that during this period, they remained in public places and travelled on motorcycle but there is nothing on record to show that the prosecutrix has ever shown any resistance if at all there was any coercion by the petitioner. He has drawn

the attention of this Court to the counselling report of the prosecutrix wherein she deposed that on 11.09.2021, the petitioner called him to Pundari bus-stand and asked her to run away. She deposed that she went with the petitioner on motorcycle and for 02 days they stayed in Chandigarh Hotel. From there, the petitioner took him to Himachal Pradesh. It is submitted that the consensual relationship between the petitioner and the prosecutrix is evident from the record of the case. He however, submits that at the time of occurrence, the prosecutrix was more than 18 years of age, however, the prosecution has concealed her matriculation certificate and thus, has shown her age less than 18 years. He submits that the petitioner is behind bars from last more than 1½ years and till date, the prosecution has examined only the prosecutrix out of total 20 prosecution witnesses. He submits that the petitioner has no criminal antecedents and hence, he deserves to be granted bail.

Learned State counsel, on the other hand, has submitted that the prosecutrix being less than 18 years of age is minor and thus, even if she is a consenting party, her consent has no legal sanctity. He submits that after the recovery of the prosecutrix, she was produced before the learned Magistrate where her statement under Section 164 Cr.P.C. was recorded. The petitioner emphatically established physical relationship with the prosecutrix without her consent. He submits that the prosecutrix has been examined before the trial Court as PW-1 and she has duly supported the case of the prosecution wherein the allegations pertaining to rape have been duly levelled by the prosecutrix. However, as per instructions, petitioner has no criminal antecedents. He submits that out of total 20 prosecution witnesses, only 01 witness has been examined till

date and thus, the petitioner has no case for the grant of bail.

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

Evidently, the prosecutrix left her home on 11.09.2021 and thereafter, she was recovered after about 08 days i.e. on 19.09.2021. As per her deposition, during this period, both of them had been travelling on motorcycle in public places. They stayed in Chandigarh hotel and thereafter, they went to Himachal Pradesh as well. There is nothing on record to show that the petitioner has any criminal antecedents as on date. As submitted before this Court that prosecutrix has already been examined by the trial Court, thus, the apprehension of the petitioner influencing the prosecutrix, do not survive anymore.

The veracity of the allegations would be assessed only after the conclusion of the trial and on 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.

(RAJESH BHARDWAJ)
JUDGE

15.05.2023
m. sharma

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