

**208 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****CRM-M-19380-2023****Date of decision : 07.11.2023****Barjesh Parsad Gupta****.....Petitioner****versus****State of Punjab****..... Respondent****CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ*********

Present :- Mr. S.S. Rangi, Advocate and
Mr. Jasinder S. Sekhon, Advocate
for the petitioner.

Ms. Akshita Chauhan, DAG, Punjab assisted by
ASI Jarnail Singh.

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

Petitioner has approached this Court by way of present second petition praying for grant of regular bail in case FIR No.469 dated 28.08.2021, under Sections 376, 120-B of IPC and Section 6 of POCSO Act, registered at Police Station Zirakpur, District SAS Nagar.

Adumbrated facts of the case are that the police received a letter from Anil Kumar Gupta, Chairman, Child Welfare Society, SAS Nagar wherein it was written that the victim child was sexually harassed by her father. The statement of the victim child was attached with the same wherein she alleged that she left home on 02.05.2021 and thereafter, she was recovered by the police on 05.07.2021 who brought her back to home. She alleged that her parents used to beat her. It was alleged that her father used to keep evil eye on her. She alleged that her father tried to sexually abuse her 2-3 times. Whenever she used to complain about the same to her mother, she also used to beat her. She alleged that she got married with Monu Tiwari and had physical relations with him 4-5 times. She also alleged that about six

days back, her father had physical relations with her. On the basis of these allegations, FIR was lodged and the investigation commenced. Petitioner who is father of the victim was arrested on 27.08.2021. The victim was medically examined. The statements of the relevant persons were recorded and the investigating agency completed the investigation. Challan was presented and charges were framed. Petitioner approached learned Judge, Special Court, SAS Nagar, Mohali praying for grant of bail however, the same was declined vide order dated 18.01.2022. Aggrieved by the same, petitioner earlier approached this Court by way of filing CRM-M-6075-2022, however, the same was dismissed as withdrawn by this Court vide order dated 06.07.2022. Hence, the petitioner is before this Court by way of this second petition.

It has been vehemently contended by counsel for the petitioner that the prosecutrix is the daughter of petitioner and she had clandestinely implicated the petitioner in the present case. He submits that as is evident, the prosecutrix eloped from home on 02.05.2021 along with Monu Tiwari. Petitioner lodged missing report regarding the prosecutrix on 07.06.2021. He submits that the FIR No.343 dated 08.06.2021 under Sections 363, 366-A of IPC was registered by the police on 08.06.2021 at Police Station Zirakpur on the statement of the petitioner. He submits that the prosecutrix made threatening calls to the petitioner and his wife i.e. parents of the prosecutrix. She performed marriage with Monu Tiwari against her wishes of the parents. He submits that as the petitioner had lodged FIR No.343 and as a counter-blast to the same, the prosecutrix lodged the present FIR against her parents only. He has submitted that though there are serious allegations made by the prosecutrix in the FIR, however, the same are not medically corroborated. He further submits that the prosecutrix herself has admitted

that she got married with Monu Tiwari and had established physical relations with him. He submits that both the parents were implicated by the prosecutrix in the FIR however, this Court had already granted anticipatory bail to the mother whereas, petitioner is behind bars since the date of his arrest. It is submitted that the prosecutrix is in the Child Protection Home as she never wanted to return to her parents. He submits that the material witnesses including the prosecutrix have already been examined. It is submitted that the allegations made against the petitioner are totally false and frivolous and are not corroborated by any other evidence on record. He has further submitted that the offence as alleged against the petitioner is also not made out. He submits that petitioner has no criminal antecedents and thus, in the facts and circumstances of the case, he deserves to be granted regular bail.

Per contra, learned State counsel has opposed the submissions made by counsel for the petitioner. She submits that the prosecutrix is the daughter of petitioner. She has submitted that there are specific allegations made by the prosecutrix and she being minor, there lies a presumption against the petitioner as per the statutory provisions of the POCSO Act. She on instructions from ASI Jarnail Singh submits that prosecutrix is in the Child Protection Home. She further submits that out of 14 prosecution witnesses, 09 witnesses including the prosecutrix have been examined. She has further apprised the Court that there is no other case against the petitioner.

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

Evidently, the prosecutrix eloped from home on 02.05.2021 and thereafter, she was recovered on 05.07.2021. After she eloped from home on 02.05.2021, petitioner lodged the missing report on 07.06.2021 and

on the basis of same, FIR No.343 dated 08.06.2021 under Sections 363, 366-A of IPC was lodged at the behest of the petitioner. The present FIR was however, lodged on 28.08.2021. The mother of the prosecutrix has already been granted anticipatory bail by this Court. As submitted before this Court that the material witnesses including the prosecutrix already stand examined. She is informed to be in Child Protection Home at present. There is nothing on record to show that petitioner has any criminal antecedents.

Without going into the merits of the case, keeping in view the arguments raised by both the sides and the custody of the petitioner, 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.

07.11.2023
m. sharma

(RAJESH BHARDWAJ)
JUDGE

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