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

CRM-M-20532-2023

Date of decision : 01.05.2023

Amandeep Kumar**.....Petitioner****versus****State of Punjab and another****..... Respondents****CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ*********

Present :- Mr. L.M. Gulati, Advocate
for the petitioner.

Mr. Karunesh Kaushal, AAG, Punjab.

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

Petitioner has approached this Court praying for grant of bail in FIR No.42 dated 05.05.2022, under Sections 363, 366 of IPC (Section 376 of IPC and Section 6 of POCSO Act added later on), registered at Police Station Anandpur Sahib, District Rupnagar.

As per the facts of the case, complaint was lodged by Kuldeep Kaur wife of Balvir Singh wherein it was alleged that her daughter-victim (name concealed) was born on 16.01.2005 and she was studying in 12th Class. She was working in JVM Factory at Sallewal, Himachal Pradesh. On 23.04.2022, she returned to her village in the evening and on 24.04.2022, she went back to Sallewal and was supposed to come to Village Lodhi Majra on 30.04.2022 but she did not come. It was suspected that her daughter had been abducted by Amandeep Kumar (petitioner) on the pretext of getting married with her. Request was made to take legal action against the culprits. On the basis of complaint, formal FIR was registered and the investigation commenced. During investigation, the victim and the petitioner were

recovered on 07.05.2022 by the police. Petitioner was arrested on the same date i.e. 07.05.2022. The victim was produced before the learned Judicial Magistrate Ist Class, Anandpur Sahib and her statement was recorded. She was also medically examined. Investigation was complete and challan was presented. Petitioner thereafter, approached the learned Court of learned Sessions Judge, Rupnagar praying for grant of bail. However, same was declined by the learned Sessions Judge vide her order dated 31.05.2022. Aggrieved by the same, petitioner on the earlier occasion approached this Court by way of filing CRM-M-31657-2022 which was allowed to be dismissed as withdrawn vide order dated 12.12.2022. Hence, petitioner has approached this Court by way of filing the present petition.

Learned counsel for the petitioner has vehemently contended that petitioner has been falsely implicated in this case only for the reason that the victim is about 17½ years of age and thus, less than 18 years of age. He has submitted that as per the case of prosecution, the victim went missing from her home on 24.04.2022 and thereafter, she was recovered after about 15 days i.e. on 07.05.2022. He submits that the victim was produced before the learned Judicial Magistrate Ist Class for recording her statement under Section 164 Cr.P.C. wherein she has specifically deposed that she was in consensual relationship with the petitioner and she wanted to perform marriage with him as well. He also submits that during this period, they went to various places and travelled by public conveyance. He has submitted that the victim has levelled no allegations whatsoever regarding the coercion by the petitioner. To strengthen his arguments, he has further submitted that the complainant and the prosecutrix have been examined by the trial Court. He submits that though they are not declared hostile but from their deposition, it is apparent that the prosecutrix had deposed regarding the consensual

relationship with the petitioner. He submits that as on date, the prosecutrix is living with the parents of the petitioner. The prosecutrix and father of the petitioner are present in the Court in person who are duly identified by counsel for the petitioner. He has submitted that now the prosecutrix is above 18 years of age and thus, is of the age of majority. Thus, in the facts and circumstances of the case, petitioner deserves to be granted bail.

Learned State counsel, on instructions from ASI Jog Nath has submitted that the prosecutrix is evidently, less than 18 years of age and thus, being minor, complicity of the petitioner is writ large. He submits that even if the petitioner is a consenting party, her consent is immaterial in the eyes of law being less than 18 years of age. He submits that the investigation is complete and charges are also framed and out of 12 prosecution witnesses, 04 witnesses have been examined including the prosecutrix and the complainant. He has also submitted that as per the instructions, petitioner is not involved in any other case.

This Court has heard counsel for both the parties and perused the record. The prosecutrix and father of the petitioner are also present in person in the Court, duly identified by counsel for the petitioner and the Court has interacted with both of them. It is apparent from the case of the prosecution that the prosecutrix remained away from her home for about 15 days with the petitioner. During this period, they had been residing on various public places and travelled by public conveyance. There is nothing on record to show that there was any resistance expressed by the prosecutrix by lodging any complaint to any authority or a person. The prosecutrix and the complainant have also been examined before the trial Court. The Court has also perused the statement of the prosecutrix recorded under Section 164 Cr.P.C. and that recorded before the trial Court while being examined as a

prosecution witness. On interaction with the prosecutrix, the Court has noted that the prosecutrix is interested in getting married with the petitioner. She has deposed that presently, she is living with the parents of petitioner. Father of the petitioner is also present in person and has affirmed the assertion of the prosecutrix that she is living with them and both the families are ready to marry her to petitioner. There is nothing on record to show that the petitioner has any criminal antecedents.

The trial of the case will take sufficiently long time. The veracity of the allegations would be assessed by the trial Court after appreciating the evidence led by both the sides. It is apparent that the material witnesses already stand examined by the trial Court. This Court would refrain itself from commenting anything on the merits of the case. However, keeping in view the overall facts and circumstances of the case and interaction with the prosecutrix, 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.

01.05.2023
m. sharma

(RAJESH BHARDWAJ)
JUDGE

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