

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(205)

2023:PHHC:068836
CRM-M-23049-2023
Date of Decision: 12.05.2023

Mohit @ Kapil

--Petitioner

Versus

State of Haryana

--Respondent

CORAM:- HON'BLE MR. JUSTICE RAJESH BHARDWAJ.

Present:- Mr. C.S. Singhal, Advocate for the petitioner.

Mr. Kirpal Singh, A.A.G., Haryana.

RAJESH BHARDWAJ.J (Oral)

The present petition has been filed under Section 439 Cr.P.C seeking the benefit of regular bail to the petitioner in case FIR No.142 dated 23.9.2017 under sections 363, 366-A, 376, 120-B IPC and sections 4 and 6 of POCSO Act, registered at Police Station, Saha, District Ambala.

As per factual matrix, a complaint was lodged on the statement of Sandeep Kumar son of Surender Singh, wherein it was alleged that his uncle had four daughters among them two were married and two girls were unmarried. The youngest daughter i.e. the victim was 16 years of age. On 19.9.2017 he along with his aunt went to Haridwar and both his cousins remained at home. They returned home on 20.9.2017 and both of his cousins were found missing from home. They searched for them but failed to trace them. Later on, they came to know that on 20.9.2017 at about 4/5 AM one person came on motorcycle and thereafter his cousins went missing. They came to know that two boys from their village namely Abhishek and Kapil @ Mohit i.e. the present petitioner were also found missing from their home. It was suspected that both these boys had enticed

away both his cousins. A request was made to take legal action against the culprits.

On the basis of the complaint present FIR was registered and investigation commenced. During investigation both the girls were recovered along with accused Abhishek and Mohit @ Kapil on 1.10.2017. They were medically examined and produced before the Magistrate concerned for recording of their statements under Section 164 Cr.P.C. Petitioner Mohit @ Kapil was arrested on 2.10.2017 and after filing of challan and framing of charges the trial commenced. The petitioner was granted bail vide order dated 17.11.2020 passed in CRM-M-9177-2020, however, during the trial petitioner remained absent and was declared proclaimed person vide order dated 9.8.2018. Later on he was arrested on 17.9.2019. He approached the learned Judge, Special Court, Ambala for grant of bail, however, after hearing the parties, the same was declined vide order dated 30.1.2020. Aggrieved by the same petitioner approached this court for grant of bail by way of filing CRM-M-42954-2021, however, the same was dismissed by this court vide order dated 13.12.2021. Hence this second petition.

Learned counsel for the petitioner vehemently contends that the petitioner has been falsely implicated in the present case. He submits that prosecutrix went missing from her home on 20.9.2017 and was recovered on 1.10.2017 i.e. after about 11 days. Thereafter, her medical examination was conducted and her statement under Section 164 Cr.P.C was recorded by the Magistrate, wherein she stated that she left her home with the petitioner with her own free will and there was no coercion on the part of the petitioner. He submits that during trial prosecutrix has been examined as

PW-2, wherein she deposed that accused Mohit @ Kapil never committed any wrong act with her. Thus she did not support the case of prosecution. Counsel further submits that prosecutrix is married with the petitioner and they have a child also who is about 3 years of age. It is submitted that petitioner along with co-accused has already filed a petition i.e. CRM-M-8333-2020 praying for quashing of the present FIR and further proceedings before the Trial Court have already been stayed by this court vide order dated 27.2.2020. Counsel submits that all the material witnesses already stand examined and they have not supported the case of prosecution. He submits that petitioner is behind bars for the last about 3 ½ years and in the overall facts and circumstances of the case he deserves to be granted the benefit of bail.

On the other hand, learned State counsel on instructions from SI Sandeep Kumar submits that there are specific allegations against the petitioner. He submits that at the time of occurrence prosecutrix was 16 years of age and even if she was a consenting party, the same has no legal sanctity in the eyes of law. It is submitted that during trial petitioner remained absent and was declared proclaimed person. Thereafter, he was arrested on 17.9.2019. He fairly submits that both petitioner and prosecutrix are married and have a child also. He submits that this court has already stayed the further proceedings before the Trial Court in a petition filed by the petitioner and co-accused praying for quashing of the FIR in question. He submits that out of total 21 prosecution witnesses 16 have already been examined including the prosecutrix. He further submits that as per information provided to him petitioner is not involved in any other case.

I have heard learned counsel for the parties at length and have gone through the records carefully.

Admittedly, petitioner is behind bars since 17.9.2019. The prosecutrix went missing from her home on 20.9.2017 and thereafter she was recovered after about 11 days. During this period she stayed with the petitioner in public places and travelled by public transport, however, there is nothing on record to show that there was any resistance on her part. Besides this, in her statement under Section 164 Cr.P.C as well as in her deposition before the learned Trial Court as PW-2 she did not support the case of prosecution. The IO of the case SI Sandeep Kumar is also present in person and has informed the court that prosecutrix and petitioner have performed marriage and they have a child also. He has also informed that prosecutrix is living with the family of the petitioner. Co-accused Abhishek has already been granted the benefit of bail. There is nothing on the record to show that petitioner has any criminal antecedents. The veracity of the allegations levelled against the petitioner would be assessed by the Trial Court only upon conclusion of the trial. This court would refrain itself from commenting on the merits of the case, as the allegations and counter allegations would be assessed only after evaluation of the complete evidence to be led by both the sides before the Trial Court. The trial would take sufficiently long time in its conclusion.

In the totality of facts and circumstances and without making any observation on merits, present petition is allowed. Petitioner be enlarged on bail on her furnishing bail/surety bonds subject to the

satisfaction of Trial Court/Duty Magistrate, concerned. Nothing stated herein shall be treated as an expression on the merits of the case.

(RAJESH BHARDWAJ)
JUDGE

12.05.2023
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Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No