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

CRM-M-24512-2023

Date of decision : 14.09.2023

Mani @ Money**.....Petitioner****versus****State of Punjab****..... Respondent****CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ*********

Present :- Mr. Ashish Aggarwal, Advocate
for the petitioner.

Ms. Akshita Chauhan, DAG, Punjab.

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

This is the second petition filed by the petitioner praying for grant of regular bail in case FIR No.62 dated 10.04.2022, under Sections 363, 366-A, 376, 120-B of IPC, 1860 (Section 6 of POCSO Act, 2012 and Section 376(DA) of IPC, 1860 added subsequently) at Police Station Gate Hakima, District Amritsar City.

Adumbrated facts of the case are that Lal Bahadur son of Khurdali made a statement before the police that he had two sons and one daughter aged 15 years of age who had passed 8th class (victim name concealed). On 09.04.2022 at about 12:00 PM, his daughter went from home to the house of Gurpreet Kaur but thereafter, she did not return. They started searching for her but could not trace her. Later on, they found that Talwinder Singh @ Dimpy and Mani @ Money (petitioner) resident of Jattan wali gali enticed away his daughter in connivance with Gurpreet Kaur. Both boys left his daughter outside the street on

10.04.2022. On asking his victim daughter, she disclosed that Talwinder Singh @ Dimpy and Mani @ Money took her to the vacant portion of one house on motorcycle from the house of Gurpreet Kaur where Talwinder Singh @ Dimpy committed wrong act with her and developed physical relations. Request was made to take legal action against the culprits. On the basis of statement, formal FIR was registered and the investigation commenced. The prosecutrix/victim was medically examined. Her statement under Section 164 Cr.P.C. was recorded. Petitioner was arrested on 10.04.2022. He approached the Court of learned Additional Sessions Judge, Amritsar praying for grant of bail however, the same was declined vide order dated 07.06.2022. Aggrieved by the same, petitioner on the earlier occasion, approached this Court by way of filing the petition, however, the same was dismissed as withdrawn vide order dated 03.08.2022. Hence, the petitioner is before this Court by way of the present second petition.

Learned counsel for the petitioner has vehemently contended that the petitioner has been falsely implicated in this case. He has submitted that as per case of prosecution, the prosecutrix went missing from home on 09.04.2022 and thereafter, she was found on the next day i.e. 10.04.2022. He has submitted that the FIR was lodged on the statement of the father of the victim and the statement of the prosecutrix was recorded under Section 164 Cr.P.C. He has further submitted that from perusal of the same, it is apparent that the allegations regarding the physical abuse if any of the victim is against the co-accused and not against the petitioner. He submits that the victim is medically examined and her ocular version is not medically corroborated. To buttress his

arguments, he has drawn the attention of this Court to the deposition of the victim and her father who were examined before the trial Court as PW-1 and PW-4 respectively. He has submitted that both the witnesses had not identified the petitioner and thus, on the request of Public Prosecutor, they were declared hostile. He submits that since the victim and the complainant have not supported the case of the prosecution, the false implication of the petitioner is writ large. He submits that even otherwise, the petitioner is behind bars since the date of his arrest i.e. 10.04.2022 and as the material witnesses already stands examined and have not supported the case of the prosecution, the petitioner deserves to be granted bail.

Per contra, learned State counsel has opposed the submissions made by counsel for the petitioner. She has submitted that the victim admittedly being 15 years of age is a minor and she has duly supported the case of the prosecution in her statement under Section 164 Cr.P.C. He has submitted that there are specific allegations made by the prosecutrix and her father regarding the heinous offence committed by the petitioner and co-accused. She submits that even if the prosecutrix and the complainant have been declared hostile, the relevant part of the depositions of these witnesses is consistent with their earlier statements. She submits that in all there are 17 prosecution witnesses, out of which, 04 witnesses including the prosecutrix and the complainant already stand examined. She submits that the petitioner has no case for grant of regular bail.

Heard. As is evident from the case of the prosecution that in all there are 03 accused. The allegations have been made by the

prosecutrix that the petitioner was present along with the co-accused, however, the allegations regarding sexual abuse were levelled against the co-accused. As submitted before this Court, the prosecutrix and her father have been examined as PW-1 and PW-4 respectively and both have not supported the case of the prosecution. She has deposed before the trial Court that except Talwinder Singh @ Dimpy, no one else did wrong act with her and thus, was declared hostile. The author of the FIR i.e. father of prosecutrix has failed to identify the petitioner in the Court and thus, he was also declared hostile on the request of Public Prosecutor.

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

14.09.2023
m. sharma

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