

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

CRM-M-25636-2022

Date of decision : 28.02.2023

Pawan

.....Petitioner

versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Manu Sachdeva, Advocate
for the petitioner.

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

Mr. Karanveer Singh, Advocate for
Mr. S.S. Aviraj, Advocate
for the complainant.

RAJESH BHARDWAJ, J. (Oral)

This is the second petition filed for grant of regular bail to the petitioner in case FIR No.64 dated 01.03.2021, under Sections 363, 366-A, 354-D, 201, 506 of IPC and Section 6 of The Protection of Children from Sexual Offences Act, 2012, registered at Police Station Bawal, District Rewari (Haryana).

Succinctly, the facts of the case are that the complaint was lodged by father of the victim wherein it was alleged that his daughter (name concealed) who was about 16 years of age was studying in 10th standard. In the intervening night of 28/29.02.2021, in the mid of the night, she was found missing from her bed. They tried to search her but failed to trace her out. It was suspected that some unknown persons had allured her in order to solemnize marriage with her. Request was made to take legal action against the culprits. On the basis of the complaint, FIR was lodged and investigation commenced. During investigation, the victim

was recovered on 3rd March, 2021. She was produced before the Magistrate on 3rd March, 2021 itself and her first statement was recorded by learned SDJM and she was again produced before the Magistrate on 15th May, 2021 wherein her second statement under Section 164 Cr.P.C was recorded. Her medical was also conducted. The statement of the relevant witnesses were also recorded. Petitioner was arrested on 15th May, 2021. He approached the Court of learned Additional Sessions Judge, Rewari praying for grant of bail. However, after hearing both the sides, Learned Additional Sessions Judge, declined the same. Aggrieved by the same, petitioner approached this Court by way of filing CRM-M-31515-2021. However, the same was allowed to be dismissed as withdrawn by this Court vide order dated 29th March, 2022. The petitioner thereafter, again approached the Court of learned Additional Sessions Judge, Fast Track Special Court, Rewari praying for grant of bail. However, it was declined by learned Fast Track Special Court vide its order dated 4th May, 2022. Thus, this is the second petition filed by the petitioner praying for grant of bail.

It has been contended by counsel for the petitioner that the petitioner has been falsely implicated in this case. He submits that as per the allegations made by the complainant, the victim went missing from her home on 28th February, 2021 and thereafter, she was recovered on 3rd March, 2021 i.e. after three days. He submits that the prosecutrix-victim was produced before the SDJM, Bawal and her statement was recorded. He submits that the victim made no allegations whatsoever against the petitioner in her statement recorded before the SDJM, Bawal on 3rd March, 2021. However, he also submits that thereafter, she was produced before

the Child Welfare Committee and in that also the victim admitted having

committed the mistake. He submits that in order to implicate the petitioner in a false and frivolous manner, the investigating agencies again produced her before learned JMIC, Bawal for recording her statement under Section 164 Cr.P.C. for the second time. He submits that on the basis of tutored version, for the first time, the victim levelled allegations of rape and kidnapping against the petitioner. He has submitted that at the time of her medical examination, the prosecutrix specifically deposed before the medical board that she went to Bawal with her own free will and no wrong act was committed with her. He has submitted that the prosecutrix and the complainant have already been examined by learned trial Court and thus, there cannot be any apprehension of tampering with the prosecution witnesses by the petitioner if his bail is considered. He submits that the petitioner has no criminal antecedents and thus, he deserves to be granted bail.

Learned counsel for the complainant has opposed the submissions made by counsel for the petitioner. He submits that there are specific allegations against the petitioner having committed the sexual offence with the minor. He further submits that at the time of recording her first statement, the victim was under the influence of the petitioner and hence, she did not level any allegation against him.

Learned State counsel has opposed the submissions made by counsel for the petitioner. He submits that the victim was 16 years of age and thus, being minor, even if she consented, that would have no legal sanctity. He submits that the statement of the prosecutrix was recorded on 3rd March, 2021 and thereafter, on 15th May, 2021. He has submitted that though in the first statement, she did not level any allegation regarding

sexual assault, however, in the second statement recorded, she has

specifically deposed against the petitioner. He submits that the prosecutrix was examined before the trial Court as PW-2 wherein she has deposed that the petitioner has committed sexual offence with her. He submits that out of 28 prosecution witnesses, 08 witnesses have been examined including the complainant and the victim. He has further submitted that as per the instructions provided, the petitioner is involved in another case pertaining to offence under Sections 323, 341 of IPC. However, he is on bail in that case.

Heard. After hearing counsel for the parties and perusing the record, it is evident from the submissions that the victim is 16 years of age and she went missing from home on 28th February, 2021 and thereafter, she was recovered on 3rd March, 2021. In the first statement recorded under Section 164 Cr.P.C. by learned SDJM, no allegations regarding any sexual offence against the petitioner was levelled. However, in her second statement which was recorded after about two months of registration of the FIR i.e. on 15.05.2021, the allegations pertaining to sexual offence were levelled against the petitioner. Out of 28 prosecution witnesses, 08 witness including the complainant and the victim were examined. Thus, it is evident that as the victim has already been examined, there is no apprehension that the petitioner can influence the prosecution witnesses.

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.

28.02.2023
m. sharma

(RAJESH BHARDWAJ)
JUDGE

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