

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

CRM-M-29793-2023

Date of decision : 09.06.2023

Arun @ Aman

.....Petitioner

versus

State of Haryana and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Sandeep Gahlawat, Advocate
for the petitioner.

Mr. Kirpal Singh Thakur, AAG, Haryana.

Ms. Amandeep Kaur, Advocate
for respondent No.3.

RAJESH BHARDWAJ, J. (Oral)

Petitioner has approached this Court by way of present petition praying for grant of regular bail in case FIR No.302 dated 05.11.2021, under Sections 363, 366-A of IPC and Section 18 of POCSO Act, 2012 added later on, registered at Police Station Civil Line Jind, District Jind.

Learned counsel for the petitioner has submitted before this Court that in the FIR there occurred a typographical mistake of about mentioning the month of occurrence which has been mentioned as 27/28.01.2021 instead of 27/28.10.2021.

On his oral request, the month of occurrence be read as 27/28.10.2021 instead of 27/28.01.2021. Registry is directed to do the necessary correction.

Adumbrated facts of the case are that the statement of Rakesh son of Nihal Singh was recorded by the police wherein he alleged that though he is resident of District Fatehabad, however, he is living on rent

in Village Nirjan, District Jind along with his children. It was further alleged that in the intervening night of 27/28.10.2021, he and his wife tried their level best to search their daughter but failed to trace her out. It was suspected that his daughter (victim) had been allured by Aman son of Mia Singh (petitioner). Request was made to take legal action against the culprits. On the basis of statement, formal FIR was registered and the investigation commenced. During investigation, she was produced before the JMIC, Jind on 12.10.2022 for recording her statement under Section 164 Cr.P.C. Petitioner was arrested on 25.05.2023. He approached the Court of learned Additional Sessions Judge, Fast Track Special Court, POCSO, Jind praying for grant of regular bail. However, after hearing counsel for the parties, learned Additional Sessions Judge, Fast Track Special Court declined the same vide his order dated 31.05.2023. Aggrieved by the same, petitioner is before this Court praying for grant of regular bail.

Learned counsel for the petitioner has vehemently contended that petitioner and the prosecutrix both were in consensual relationship. He has submitted that as per the facts of the case, the prosecutrix (name concealed) went missing from her home in the intervening night of 27/28.10.2021, however, thereafter, she was traced on 11.10.2022 and was produced before the JMIC, Jind on 12.10.2022 wherein her statement under Section 164 Cr.P.C. was recorded. He has submitted that the prosecutrix deposed before the Magistrate that she went with the petitioner of her own as her family members were not happy with her relationship with the petitioner. He has further submitted that the prosecutrix also submitted that she had performed marriage with the

petitioner. He has submitted that though the prosecutrix was minor on the date of occurrence, however, she had performed marriage after attaining the age of majority and presently, she is living with the mother of petitioner. He submits that the petitioner is 22 years of age and he has no criminal antecedents and in the facts and circumstances of the case, no case as alleged is made out against the petitioner and thus, he deserves to be granted regular bail.

Learned counsel for the complainant has affirmed the submissions made by counsel for the petitioner. At the outset, she has submitted that prosecutrix left the home voluntarily with the petitioner and as she was minor on the date of occurrence, she could not perform the marriage, however, as on date after attaining the age of majority, she has performed the marriage with the petitioner and now she is living with the family of petitioner as their daughter-in-law.

Learned State counsel, on the other hand, on instructions from ASI Dinesh Kumar, has submitted that the prosecutrix was minor at the time of occurrence and thus, the offence as alleged is duly made out against the petitioner. He has submitted that even if the victim was a consenting party, the same would be of no legal sanctity as she was minor on the date of occurrence. He submits that the case is under investigation. He further submits that petitioner has no criminal antecedents as he is not involved in any other case.

The prosecutrix is present in person in the Court. The Court has interacted with the prosecutrix. She has submitted before this Court that she was in love affair with the petitioner and she voluntarily left her home with the petitioner. She has submitted that after leaving her home

with the petitioner, both of them performed marriage and as on date, she is living with the family of petitioner. She has further submitted that as on date, she is wife of the petitioner and a false case is registered against the petitioner by her father who was against her marriage since beginning.

Heard. After hearing counsel for the parties and perusing the record, it is apparent that the victim left her home in the intervening night of 27/28.10.2021. Thereafter, she was traced after about a year and during this period, she was with the petitioner. As submitted before this Court, both have performed the marriage and the victim is living with the family of the petitioner. There is nothing on record to show that the petitioner has any criminal antecedents as on date.

The trial of the case will take sufficiently long time. This Court would refrain itself from commenting anything on the merits of the case. However, keeping in view the peculiar facts and circumstances of the case, 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/Chief Judicial Magistrate/Duty Magistrate. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

09.06.2023
m. sharma

(RAJESH BHARDWAJ)
JUDGE

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