

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(209)

2023:PHHC:048818
CRM-M-34832-2022
Date of Decision: 10.04.2023

Nawab Khan

--Petitioner

Versus

State of Punjab

--Respondent

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

Present:- Mr. F.S. Virk, Advocate for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab.

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.62 dated 5.4.2021 under sections 363, 366, 366-A & 120-B I.P.C (lateron charge amended and charged under Section 4 of POCSO Act in the alternative under Section 376 IPC), registered at Police Station, Sadar Patiala, District Patiala.

As per factual matrix, a complaint was lodged by the Parvinder Singh, wherein it was alleged that he had two children. The elder one was daughter i.e. the victim who was studying in 12th class and was of the age of about 17 ½ years. Younger to her was his son who was 13 years of age. On 4.4.2021 at about 10 PM the whole family went to sleep and they woke up at 5 AM and found their daughter was not on her bed. They tried to search her but despite their best efforts failed to search her. Thereafter the complainant came to know that his daughter had been allured by Nawab Khan i.e. the present petitioner in connivance with his sister. A request was made to take legal action against the culprits.

On the basis of the complaint, present FIR was lodged and investigation commenced. During investigation the petitioner and victim were recovered by the investigating agency on 9.4.2021. Petitioner was formally arrested on 9.4.2021. The victim was medically examined and her statement under section 164 Cr.P.C was recorded by the Illaqa Magistrate concerned. Petitioner approached the court of learned Addl. Sessions Judge, Patiala for grant of bail, however, after hearing the parties, the same was declined vide order dated 22.12.2021. Aggrieved by the same petitioner approached this court for grant of bail by way of filing CRM-M-7834-2022, however, the same was allowed to be withdrawn by this court vide order dated 28.2.2022. Hence the present petition.

Learned counsel for the petitioner vehemently contends that petitioner has been falsely implicated in the present case for the simple reason that the victim in this case was less than 18 years of age at the time of occurrence. He submits that victim left her home on 4.4.2021 and thereafter she was recovered after 5 days i.e. on 9.4.2021. Her statement under Section 164 Cr.P.C was recorded by the concerned Illaqa Magistrate wherein she specifically deposed that she went with the petitioner from her home. Thereafter, they went to Amritsar and stayed near Darbar Sahab for two days. They went to different places, however, the police arrested them on 9.4.2021 from Patran. Thereafter custody of the victim was given to her parents and under their influence she deposed before the Trial Court as PW-1 that she was sexually abused by the petitioner. Counsel submits that victim has deposed a tutored version against the petitioner. He submits that complainant i.e. the father of the victim also appeared before the Trial Court and his examination-in-chief was recorded by the court on 6.5.2022 and the

case was deferred for recording his cross-examination, however, despite repeated opportunities the complainant did not appear before the Trial Court for recording his cross-examination. It is submitted that Trial Court issued bailable warrants to secure his presence, however, he did not appear and again on 22.3.2023 bailable warrants were issued by the Trial Court for securing his presence. Counsel submits that complainant is avoiding his presence before the Trial Court only to prolong the incarceration of the petitioner. It is submitted that petitioner is behind bars for the last about 2 years and in the overall facts and circumstances of the case, he deserves to be enlarged on bail.

On the other hand, learned State counsel on instructions from ASI Kuldeep Singh has submitted that there are specific allegations against the petitioner. He submits that victim was less than 18 years of age at the time of occurrence. He submits that even if victim was a consenting party, her consent had no legal sanctity in the eyes of law. He further submits that in her statement recorded under section 164 Cr.P.C victim deposed that she went with the petitioner of her own will, however, while appearing as PW-1 before the Trial Court she has duly supported the case of prosecution and deposed that she was sexually abused by the petitioner. It is submitted that out of total 18 prosecution witnesses only victim has been examined so far and only examination-in-chief of the complainant has been recorded. It is submitted that petitioner is involved in one more case i.e. FIR No.28 dated 5.2.2021 registered under sections 323, 341, 506, 34 IPC at Police Station, Sadar Patiala.

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

Admittedly, petitioner is behind bars since 9.4.2021. Victim, who was less than 18 years of age left her home and she stayed with petitioner at public places and travelled by public transports. In her statement recorded under Section 164 Cr.P.C she specifically deposed that she left her home with her own will. Complainant has been ordered to be summoned throughailable warrants by the learned Trial Court twice, however, only examination-in-chief has been recorded and his cross-examination is yet to be completed.

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 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 his furnishing bail/surety bonds subject to 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

10.04.2023

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