

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRM-M-38811-2022 (O&M)

Date of order: 18.08.2023

Lovejit Singh @ Love

.....Petitioner(s)

Vs.

State of Punjab

.....Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr.Kanwar Pahul Singh, Advocate
for the petitioner.

Mr. Pankaj Khullar, AAG Punjab.

Nidhi Gupta, J.

Present is the first petition filed by the petitioner under Section 439 of Code of Criminal Procedure (hereinafter referred to as "Cr.P.C.") seeking grant of regular bail in case FIR No.99 dated 17.04.2021 registered under Sections 376, 363, 366, 342, 506 and 120-B of Indian Penal Code, 1860 (hereinafter referred to as "IPC") and Section 4 of POCSO Act, at Police Station Cheharta, District Amritsar.

2. FIR in the present case was registered upon the complaint/statement of the father of the prosecutrix, and said FIR is reproduced hereinbelow:-

"Statement of Sanyog Kumar s/o Mohan Lal, R/o Gali No.6 Bhore Wali Gali, Mohalla Vikas Nagar, Khandwala, Cheharta Amritsar, aged about 46 years mobile no.97813-76843. Stated that I am resident of above address on rent. I have three children. Elder one son Deepak, then Daughter Damini, and younger one Kajal who is Metric pass and also doing job in medicine factory industrial area, near Polytechnical college. She used to go at 9 am in the morning and returned at 05.30

pm to home. She went to her job in routine manner at 9 am at factory and did not return back to home. We tried to search her at our own and we found that my daughter Kajal has been enticed away on the pretext of marriage by our neighbor viz. Love S/o Punjab Singh R/o Gali No.6, Bhore Wali Gali Vikas Nagar Khandwala Cheharta Amritsar with the help of his friend namely Arjan Singh S/o Kabal Singh R/o Gali No.6, Vikas Nagar, Ghanupur, Amritsar. I believed that they both have enticed away my daughter namely Kajal. My daughter Kajal is aged 16 years. Action be taken and I be bestowed justice...”

3. It is inter alia submitted by learned counsel for the petitioner that the complainant in the present case is the father of the prosecutrix. The prosecutrix was about 16 years of age at the time of incident. It is stated that the petitioner and the prosecutrix were in a consensual relationship. Learned counsel refers to the deposition of prosecutrix as PW2 (Annexure P3 colly) wherein she has categorically stated that the petitioner did not entice her away on the pretext of marriage nor he committed rape upon her. Learned counsel for the petitioner further submits that even the complainant/PW1 has turned hostile in the present matter as evident from his deposition (Annexure P3 collectively).

4. Learned State Counsel files custody certificate dated 17.08.2023 which is taken on record, and as per which the petitioner has been in custody for a period of 2 years 3 months and 27 days. Learned State Counsel relies upon judgment of Hon’ble Supreme Court in **“Rohit Bishnoi Vs. The State of Rajasthan & Another”** Law Finder Doc ID # 2271440; **“Hemudan Nanbha Gadhvi Vs. State of Gujarat”** Law Finder Doc ID # 1249481; and of Allahabad High Court in **“Krishna Kant Vs. State of U.P.”**

Law Finder Doc ID # 2095721, to submit that in a case under the POCSO Act, if the prosecutrix is below 18 years of age then her consent is of no relevance and therefore, the petitioner ought not to be granted bail.

5. In response, learned counsel for the petitioner relies upon judgment of the Bombay High Court in **“Imran Iqbal Shaikh Vs. The State of Maharashtra & Another” Bail Application No.997 of 2022 decided on 26.04.2023**, wherein it is held as follows:-

“4. It is true that the victim is a child within the meaning of section 2(d) of the POCSO Act. The Applicant was also a young boy of 22 years of age at the time of the incident. The statement of the first informant prima facie indicates that the relationship was consensual. It needs to be noted that the POCSO Act has been enacted to protect children from offences of sexual assault, sexual harassment etc., and contains stringent penal provisions as to safe guard the interest and the well being of the children. The object is certainly not to punish minors in romantic or consensual relationship and brand them as criminals.”

6. Learned counsel for the petitioner also relies upon judgment of Delhi High Court in **“Ajay Kumar Vs. State Govt. of NCT of Delhi & Another” Bail Application No.2729/2022 decided on 20.10.2022**, wherein too the above said view taken by the Bombay High Court has been expressed.

7. I have heard learned counsel for the parties.

8. Without commenting on the merits of the matter, however, keeping in view the totality of the facts and circumstances of the case, including the fact of the period undergone by the petitioner, as also the fact that there are no other cases against the petitioner; the fact that

trial will take some time to conclude and the fact that material witnesses already stand examined, present petition is **allowed**. The petitioner namely Lovejit Singh @ Love s/o Punjab Singh is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the concerned trial Court/Duty Magistrate.

9. Pending application(s) if any also stand(s) disposed of.

18.08.2023
Sunena

(Nidhi Gupta)
Judge

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