

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

CRM-M-42664-2022

Date of Decision: 25.05.2023

Vikas

..... Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. R.S. Bajwa, Advocate, for the petitioner.

Mr. Kirpal Singh Thakur, Asstt. Advocate General, Haryana.

Mr. Anubhav Siwach, Advocate for

Mr. Balraj Gujjar, Advocate, for the complainant.

Rajesh Bhardwaj, J. (ORAL)

Prayer in the present petition is for the grant of regular bail to the petitioner in a case FIR No.515 dated 13.12.2021, registered under Section 365 IPC (challan presented under Sections 354, 354-A, 363, 366, 452 and 506 IPC and Sections 8 and 12 of POCSO Act), at Police Station Model Town, District Panipat.

As per facts of the case, Kuldeep Verma made a statement before the Police, wherein, it was alleged that his daughter is about 17 years and 3 months of age. On 13.12.2021, his daughter i.e. the victim (name concealed) went missing at about 4:00 p.m. as she left the home to get her date of birth changed in her Aadhar Card. However, she did not return and her mobile phone was also found switched off. They tried their best to trace her out, but failed to trace her out. Request was made to take appropriate legal action. On the basis of the complaint, a formal FIR was registered and investigation commenced. During the investigation, the victim was recovered from Delhi on 16.12.2021 and she was produced before the

learned Magistrate for recording her statement under Section 164 Cr.P.C. The Investigating Agency also offered for her medical examination, however, she refused for the same and thus, she could not be medically examined. The petitioner was arrested on 17.12.2021. He approached the Court of learned Fast Track Court, (POCSO), Panipat for grant of bail, however, the learned Court after hearing both the sides, dismissed the same vide its order dated 31.03.2022. Aggrieved by the same, the petitioner on the earlier occasion had approached this Court by way of filing CRM-M-17984-2022 for grant of bail, however, the same was allowed to dismissed as withdrawn on 14.07.2022. The petitioner again has approached this Court by way of filing the present second petition for grant of bail.

Learned counsel for the petitioner has vehemently contended that the petitioner has been falsely implicated in this case. He submits that as per the recovery memo of birth certificate of the prosecutrix, her date of birth has been mentioned as 24.04.2003, which is issued by the Health Department, Panipat Haryana Government, thus, on the date of occurrence, the prosecutrix was more than 18 years. He submits that the Investigating Agency deliberately shown the prosecutrix less than 18 years on the basis of the Senior Secondary School certificate, which cannot be relied upon. He submits that in the facts and circumstances of the case, the age of prosecutrix is debatable. He has submitted that from the facts and circumstances of the case at the most, it was a case of consensual relationship between the petitioner and the prosecutrix. He submits that as per the case of the prosecution, the prosecutrix went missing from her home on 13.12.2021 and thereafter, she was recovered from Delhi on 16.12.2021. He submits that in view of her statement made under Section 164 Cr.P.C.,

during this period she had been travelling by public conveyance from one place to another and there is nothing on record to show that there was any coercion on the part of the petitioner. He submits that the prosecutrix herself declined to go under the medical test and thus, ocular version is not medically corroborated. He submits that in her statement under Section 164 Cr.P.C., there was no allegations regarding any sexual offence committed by the petitioner with the prosecutrix, but later on in due deliberated manner, the allegations were levelled to implicate the petitioner in the heinous offence. He submits that the petitioner is behind bars since 17.12.2021 and till date the prosecution has examined only three witnesses. He further submits that the petitioner has no criminal antecedents and thus in these circumstances he deserves to be granted bail.

Learned counsel for the complainant has opposed the submissions made by learned counsel for the petitioner and has submitted that the petitioner is a habitual offender and thus, he does not deserve the concession of bail.

Learned State counsel also opposes the submissions made by learned counsel for the petitioner. He submits that the prosecutrix is minor in view of the certificate issued by the Senior Secondary School and thus, on the date of occurrence, she was 17 years and 3 months of age. He submits that the Investigating Agency though wanted to medically examine the prosecutrix, but she refused to undergo the medical examination and thus, she could not be medically examined. He further submits that out of total 13 prosecution witnesses, 3 witnesses have been examined including the victim, who has supported the case of the prosecution. On instructions from SI Baljit, he has submitted that the petitioner is involved in two more case, out of which in one he has been acquitted and other under the NDPS

Act is pending adjudication.

Heard.

Evidently, the petitioner is behind bars since 17.12.2021. As per the case of the prosecution, the prosecutrix went missing from home on 13.12.2021 and thereafter, she was recovered from Delhi on 16.12.2021. During this period both the petitioner and the prosecutrix were residing in the public place and were travelling by public conveyance. Whether the prosecutrix is minor or not, is a subject matter of the evidence to be led by both the parties before the trial Court. As submitted before this Court, the prosecutrix has already been examined and thus, possibility of the petitioner influencing her does not survive any more.

Veracity of the allegations would be evaluated by the trial Court only after appreciation of complete evidence to be led by both the parties before it. This Court would refrain itself from commenting anything on the merits of the case, however, considering the prayer for grant of bail to the petitioner, I am of the view that learned counsel for the petitioner has been able to make out a case for grant of regular bail to the petitioner. The trial would take sufficiently long time for its conclusion.

Accordingly, the present petition is allowed and the petitioner is ordered to be released on bail 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.

25.05.2023
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Whether Speaking/Reasoned
Whether Reportable

(RAJESH BHARDWAJ)
JUDGE

: Yes/No
: Yes/No