

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

CRM-M-51151-2022

Date of decision : 02.02.2023

Shahrukh

.....Petitioner

versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Kunal Dawar, Advocate
for the petitioner.

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

RAJESH BHARDWAJ, J. (Oral)

This is the second petition filed by the petitioner praying for grant of regular bail in case FIR No.213 dated 15.06.2021, under Sections 363, IPC (Sections 366, 342, 506, 201 of IPC; Sections 6, 8, 17 of POCSO Act and Sections 25, 54, 59 of Arms Act, 1959 added later on), registered at Police Station SGM Nagar, District Faridabad, Haryana.

As per facts of the case, the complaint was lodged by father of the victim wherein it was alleged that his eldest daughter who was 15 years of age had gone to Raja Chowk and thereafter, from Raja Chowk at about 12:49 P.M., she went missing. They tried to search her, however, could not trace her. The description about his daughter was given and the request was made to search his daughter. On the basis of allegations, the investigating agencies found the offence to have been committed under Section 363 IPC and registered the FIR. Then investigation commenced. During investigation, the victim was recovered on 23rd June, 2021 when she was in the company of co-accused Mohd. Hussain @ Lala. She was

produced before the learned Magistrate on 24.06.2021 for recording her statement under Section 164 Cr.P.C. and was medically examined. On conclusion of the investigation, challan under Section 173 Cr.P.C. was filed. Petitioner was arrested on 30.06.2021. He approached the Court of learned Additional Sessions Judge, Fast Track Special Court, Faridabad praying for grant of bail. However, after hearing counsel for both the sides, learned Additional Sessions Judge, declined the same vide order dated 17.10.2022. Aggrieved by the same, petitioner had approached this Court on the earlier occasion by way of filing CRM-M-46710-2021. However, after hearing counsel for the petitioner, the petition was dismissed as withdrawn vide order dated 02.05.2022. This is the second petition praying for grant of regular bail.

Learned counsel for the petitioner has vehemently contended that the petitioner has been falsely implicated in this case. He submits that from the reading of the allegations in the FIR, it is apparent that the petitioner is not named in the FIR. He further submits that the prosecutrix/victim (name concealed) though is less than 18 years of age, however, she went missing from her home on 15.06.2021 and was recovered after 08 days thereafter i.e. 23.06.2021 from the company of co-accused Mohd. Hussain @ Lala. Her statement was recorded under Section 164 Cr.P.C. by learned Magistrate on 24.06.2020 and she deposed regarding the complicity of the co-accused. He submits that on completion of the investigation, the investigating agencies filed the report under Section 173 Cr.P.C. and learned trial Court framed the charges thereafter. He has submitted that the petitioner was charge-sheeted for the

offence under Section 342 IPC and Sections 8 and 17 of POCSO Act. He asserts that the charge under Section 6 of POCSO Act is not even framed against the petitioner. He further submits that now the prosecutrix and her father i.e. the complainant both have been examined and thus, there cannot be any apprehension that if the petitioner is granted bail, he can influence the victim. He submits that the petitioner has no criminal antecedents and he is behind bars from last about 1 ½ years. Thus, in the facts and circumstances of the case, he deserves to be granted regular bail.

Learned State counsel, on the other hand, has opposed the submissions made by counsel for the petitioner. He has submitted that the prosecutrix is minor being less than 15 years of age. He submits that the prosecutrix was kidnapped by the accused and taken to Ahmedabad and was recovered after about 08 days from the custody of the co-accused. He further submits that in the statement of father of the victim, he has stated that the victim was recovered from the house of the father of the petitioner. However, he submits that the complainant and the prosecutrix both have been examined by the trial Court and they have supported the case of the prosecution. He does not dispute the charges framed against the petitioner. He submits as per the instructions that the petitioner is not involved in other cases.

I have heard counsel for the parties and perused the record. There is no gainsaying that the victim is minor and she went missing from her home on 15.06.2021 and thereafter, she was recovered on 23.06.2021. During this period, she has been traveling with the accused in public conveyance and remained in public places. Though she is minor but there is nothing on record to show that there was any coercion or the victim

made any resistance regarding her kidnapping and molestation as alleged against the petitioner. The petitioner is being prosecuted for the offence under Section 342 IPC and Sections 8, 17 of POCSO Act. The material witnesses including the complainant already stands examined by the trial Court. There is nothing on record to show that the petitioner has any criminal antecedents.

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.

02.02.2023
m. sharma

(RAJESH BHARDWAJ)
JUDGE

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