

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

CRM-M-58336-2022

Date of Decision: 11.04.2023

Surjeet Kumar

..... Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Saransh Sabharwal, Advocate and
Mr. Sajal Bansal, Advocate, for the petitioner.
Mr. B.S. Virk, Deputy Advocate General, Haryana.

Rajesh Bhardwaj, J. (ORAL)

Prayer in the present petition is for the grant of regular bail to the petitioner in a case FIR No.66 dated 27.06.2021, registered under Sections 346, 363, 366-A IPC and Section 6 of POCSO Act, 2012, at Police Station Sector 20, Panchkula.

As per facts of the case, the complaint was lodged by mother of the victim, wherein, it was alleged that she has five daughters and one son. Her second daughter who was aged 16-17 years, went missing from house from 27.06.2021. She tried her best to trace her out at her own level, but failed to do so. Request was made to trace her out. On the basis of the statement, formal FIR was registered for the offence under Section 346 IPC and the investigation commenced. During the investigation, the victim was recovered from Chapra (Bihar) on 29.06.2021. After her recovery she was medically examined and produced before the learned Judicial Magistrate, Panchkula on 30.06.2021 for recording her statement under Section 164 Cr.P.C. After her recovery offences under Sections 363, 366-A IPC and Section 6 of POCSO Act, 2012 were added. The petitioner was arrested on

01.07.2021. He approached the Court of learned Special Court, Panchkula praying for grant of bail, who, after hearing the parties, declined the same vide order dated 20.04.2022. Aggrieved by the same, the petitioner approached this Court on the earlier occasion by way of filing bail petition bearing CRM-M-17799-2022, however, the same was allowed to be dismissed as withdrawn by this Court vide order dated 05.05.2022. Hence, the petitioner 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 the petitioner is of the age of the majority and the victim is minor, however, there was consensual relationship between both of them. He submits that as per the case of the prosecution, the victim left her home voluntarily with the accused on 27.06.2021 and thereafter, both of them went to Chapra (Bihar) by public conveyances. He submits that after recovery of the prosecutrix on 29.06.2021 from Chapra (Bihar), the Investigating Agency produced her before the learned JMIC, Panchkula and recorded her statement under Section 164 Cr.P.C. He submits that the prosecutrix specifically deposed that she left her home on 27.06.2021 at about 7:38 A.M. She deposed that she was in consensual relationship with the petitioner. She further deposed that they went to Ambala and boarded a bus for Delhi and from there they reached Chapra (Bihar) by train. She also deposed that she was in consensual relationship with the petitioner from the last two years. He submits that the prosecutrix also deposed that the petitioner did not establish any physical relations with her as they were travelling in crowded public conveyances. He submits that thereafter, custody of the prosecutrix

given to her parents and under their pressure she deposed against the petitioner before the Court while appearing as PW-1. He submits that the complainant and the prosecutrix who are the material witnesses already stand examined and the petitioner has no criminal antecedents. He submits that the petitioner is behind bars from the last two years and thus, in the facts and circumstances, he deserves to be granted bail.

On the other hand, learned State counsel has opposed the submissions made by learned counsel for the petitioner. He has submitted that the prosecutrix in this case is admittedly a minor being about 16 years of age. He has submitted that even if there is consent on the part of the prosecutrix, the same would have no legal sanctity as consent of the minor has no relevance under the law. He has submitted that though in her statement under Section 164 Cr.P.C. she deposed that she went voluntarily with the petitioner, however, while appearing before the Court as PW-1, she has duly supported the case of the prosecution and deposed that the petitioner established physical relations with her number of times. He submits that as per the medical report, it was opined that child sexual abuse could not be ruled out. He submits that out of total 16 prosecution witnesses, 6 witnesses including the prosecutrix and the complainant have been examined. He submits that as per the information received, the petitioner is not involved any other case.

Heard.

Admittedly, the petitioner is behind bars since 01.07.2021. The prosecutrix after her recovery deposed in her statement recorded under Section 164 Cr.P.C. that she left home voluntarily with the petitioner and thereafter, both of them had been travelling by public conveyances from one

place to another and they reached Chapra (Bihar) by boarding the train. However, lateron at the time of examination before the trial Court, the prosecutrix changed her statement and deposed that she was subjected to sexual intercourse by the petitioner. It is apparent that the petitioner has almost completed incarceration of about two years. The material witnesses have already been examined by the Court. The Court would refrain itself from commenting anything on the merits of the case and on the allegations made by the petitioner regarding the same. Veracity of the allegations would be evaluated by the learned trial Court on the basis of the evidence to be led by both the parties before it. 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.

11.04.2023			(RAJESH BHARDWAJ)
sharmila			JUDGE
	Whether Speaking/Reasoned	:	Yes/No
	Whether Reportable	:	Yes/No