

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(213)

CRM-M-60804-2022
Date of decision:- 17.07.2023

Ashok Kumar

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. A.P. Kaushal, Advocate for the petitioner.

Mr. Arun Luthra, DAG, Punjab for State-respondent.

Mr. Suresh Verma, Advocate for the complainant.

SUVIR SEHGAL, J. (ORAL)

1. This is the second petition filed under Section 439 Cr.P.C. seeking grant of post-arrest bail in:-

FIR No.	Dated	Police Station	Sections
58	25.03.2021	Division No.6, District Police Commissionerate, Ludhiana	363 and 366-A, IPC (later on Sections 376 and 120-B, IPC and Section 4 of the POCSO Act, 2012 were added)

2. Case of the prosecution is that FIR, Annexure P-1, has been registered on the statement of father of a seventeen year old girl (hereinafter to refer to as “the minor prosecutrix”) on the allegation that his daughter, who was born on 06.02.2004, has been missing from her parental home since 21.03.2021 and despite extensive search, she could not be located. Allegation has been levelled that Ashok Kumar, present petitioner, who used to come to his house often and resided in the same locality, has enticed her on the pretext of marriage. It has been further alleged that Dina Nath and Manu, were hand in glove with him and have financially helped him.

3. By making a reference to the statement of the minor prosecutrix recorded under Section 164, Cr.P.C., Annexure P-2, counsel for the petitioner contends that the prosecutrix, who is more than seventeen years of age, had left her home of her own with the intention of marrying the petitioner. He has also invited the attention of the Court to the history recorded by the doctor, Annexure P-6, wherein the minor prosecutrix categorically stated that she ran away with the petitioner and married him at Delhi. Counsel has laid stress on her statement before the doctor, wherein minor has admitted that she was in consensual physical relationship with the petitioner. Counsel submits that the minor prosecutrix and her father-complainant have been examined and the examination of the complainant has been concluded after the first petition was withdrawn in August, 2022. He asserts that the petitioner, who is in custody since 15.04.2021, deserves to be released on bail.

4. *Per contra*, State counsel, upon instructions received from HC, Balvir Singh, has opposed the petition and has argued that the petitioner is accused of alluring a minor girl. By referring to the Custody Certificate, he submits that the petitioner is a married man, who is involved in matrimonial litigation with his wife. Still further, State counsel, who is assisted by the counsel for the complainant, has taken the Court through the cross-examination of the minor prosecutrix to submit that her statement recorded by her before the Magistrate was made under pressure. As per his instructions, three out of twenty prosecution witnesses have been examined. He could not dispute that both the vital prosecution witnesses have stepped in the witness box.

5. I have heard counsel for the parties and considered their respective submissions.
6. As to whether the relationship between the petitioner and the minor prosecutrix was consensual or whether the petitioner had deceived her, which will be debated before the Trial Court on the basis of the evidence adduced by the parties and it does not require any comment or observation from this Court at this stage. Suffice it to notice that both the crucial prosecution witnesses have been examined, petitioner is in detention for the last more than twenty seven months and there is remote possibility of an early conclusion of the trial. Considering these factors, this Court is of the view that the prayer made in the petition deserves to be acceded to.
7. Without advertng to the merits or demerits of the arguments addressed by counsel for the parties, petition is allowed. Petitioner is ordered to be released on bail on furnishing adequate bail/surety bonds to the satisfaction of the Area Magistrate/Duty Magistrate/Trial Court concerned.
8. It is clarified that nothing said hereinabove shall be construed to be an expression of opinion on the merits of the case.

(SUVIR SEHGAL)
JUDGE

17.07.2023
Kamal

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No