

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

211

CRM-M-70-2023 (O&M)

Date of order: 08.08.2023

Ankush Kumar

.....Petitioner(s)

Vs.

State of Punjab

.....Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Sanjeev Sharma, Advocate
for the petitioner.

Mr. Jashanpreet Singh, DAG 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.277 dated 08.11.2020 registered under Sections 363, 366 and 376 of Indian Penal Code, 1860 (hereinafter referred to as "IPC") and Section 6 of POCSO Act, at Police Station Model Kotwali, District Patiala.

2. FIR in the present case was registered on the basis of statement of complainant-father of the prosecutrix. FIR is reproduced hereinbelow:-

"Statement of Kala s/o Ajgar r/o Khare Wali Gali, Mathura Colony, PS Kotwali, Patiala. It is stated that I am resident of above said address and is Tikki Chat vendor in marriage functions. I have four children. two elder daughters namely Muskan aged 17 years and Rukhsar aged 15 years and two sons namely Sahil aged 13 years and Shahid aged 11 years. My

daughter Rukhsar aged 15 years who is in 8th class studying in Govt. School Hind Sewa Samiti High School, Arna Barna Chowk. Due to Lock Down she remains at home and is learning stitching from Sony Stitching centre, Near Kapoor Chowk, Mathura Colony. On the intervening night of 3/4.11.2020 has eloped from house between 2 AM and 3 AM. Her identification is that she is aged 15 years height is 4 feet 7 inch, colour fair and slim body and is wearing Salwar Kameez. I alongwith my family is searching her. But I am of the belief that my daughter Rukhsar aged about 15 years has taken away by Ankush son of Mohinder Singh, who is residing with his maternal uncle Bittu, in front of our house, by luring her to marry. I along with my wife Afsana was coming to police station for information but you met me one the way at bridge of Chhoti Nadi, Sanour road and I have recorded my statement to you. Heard and is correct...".

3. It is inter alia submitted by learned counsel for the petitioner that the petitioner has been falsely implicated in the present case. It is contended that the victim in her testimony as PW3 has deposed that she was having an affair with the petitioner and on the night of 02.11.2020, she had left her parental home along with the petitioner without informing her parents; and thereafter on 08.11.2020 she along with the petitioner had presented themselves in Police Station Sadar, Patiala. Victim has further stated in her examination-in-chief that during this period she had developed consensual relationship with the petitioner. Even in her cross-examination, the victim has admitted that she had accompanied the petitioner voluntarily as she wanted to marry him.

4. Learned State Counsel files custody certificate dated 07.08.2023 which is taken on record and as per the same, the petitioner

has been in custody as undertrial for a total period of 2 years 8 months 28 days. Learned counsel submits that victim was only 15 years old at the time of incident. It is submitted that as per the CFSL report, the petitioner is the biological father of the aborted foetus of the victim. Learned State counsel informs that out of 17 witnesses 8 have been examined. Learned counsel is unable to deny the above said deposition of the victim as PW3; further submits that the complainant has expired.

5. I have heard learned counsel for the parties.
6. 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 that material witnesses/prosecutrix already stands examined; and the fact that the trial will take time to conclude; and that the petitioner has been in custody since 12.11.2020, for a period of 2 year 8 months 28 days; and that the petitioner has no other case against him, the present petition is **allowed**. The petitioner namely Ankush Kumar son of Mohinder Singh is directed to be released on regular bail on his furnishing bail and surety bonds to the satisfaction of the concerned trial Court/Duty Magistrate.
7. However, it is made clear that nothing stated above shall be construed as an expression of opinion on the merits of the case.
8. Pending application(s) if any also stand(s) disposed of.

08.08.2023
Sunena

(Nidhi Gupta)
Judge

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