

221 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-64474-2023
Date of decision: 7th March, 2024

Sunil Kumar

...Petitioner(s)

Versus

Union Territory, Chandigarh

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Rajesh K. Dadwal, Advocate for the petitioner.
Mr. Manish Bansal, PP, U.T., Chandigarh.

MANISHA BATRA, J (ORAL):-

The present petition has been filed under Section 439 of Cr.P.C.
seeking regular bail in FIR mentioned below:-

FIR No.	Police Station	Sections
170	21.08.2020	363 later on added offences under Sections 376(3) of Indian Penal Code, 1860 (for short ‘IPC’) and Section 6 of Protection of Children from Sexual Offences Act, 2012 (for short ‘POCSO Act’)

2. Brief facts of the case relevant for the purpose of disposal of this petition are that the aforementioned FIR was initially registered under Section 363 of IPC on the basis of written complaint filed by the complainant ‘V’ (name withheld) alleging that his daughter ‘A’ (name withheld) i.e. the prosecutrix, who was aged about fifteen years had left home on 13.08.2020, without informing anybody and raised suspicion that she had been enticed away by someone. After registration of FIR,

investigation proceedings were initiated. During investigation, the prosecutrix was recovered on 01.10.2020 outside the Dev Samaj College, Chandigarh. Her statement under Section 164 of Cr.P.C. was recorded, wherein, she stated that the petitioner who used to work with his father in his catering business, had forcibly established physical relations with her and had taken her away to Bihar on the pretext of marrying her and then left her back to Zirakpur. She was medically examined. She was found to be pregnant. Offences under Sections 376(3) of IPC and Section 6 of POCSO Act were added. The present petitioner was arrested on 19.03.2023. He was also medically examined. After completion of necessary investigation and usual formalities, challan under Section 173 of Cr.P.C. was presented in the Court for trial of the accused and presently, he is facing trial for the commission of the offences punishable under Sections 363, 376(3) of IPC and Section 6 of POCSO Act.

3. The present petition has been filed by the petitioner on the grounds and it is argued by his counsel that he has been falsely implicated in this case. Infact, the prosecutrix and himself were in love with each other from the last three years and wanted to solemnize marriage. Their parents were against their alliance as they belonged to different castes. Both of them are major. In view of the resistance on the part of the parents of the prosecutrix against the matrimonial alliance of the petitioner and the prosecutrix, they had left their respective houses in August, 2020 and had solemnized marriage at Durga Mata Mandir, Village Machiwara, Bihar. It is submitted that the child in the womb of the prosecutrix was got aborted

against her wishes and under the pressure of the parents. The prosecutrix in her sworn statement had not supported the version allegedly given before the police as well as while recording her statement under Section 164 of Cr.P.C.. The prosecutrix had left her house at her own wish. She herself had been claiming to be major. There was nothing on record to show that he had committed any act of sexual intercourse with the prosecutrix against her wishes. He was in custody since 19.03.2023. The trial is likely to take time. His custodial interrogation is no more required. Therefore, it is argued that the petition deserves to be allowed.

4. Status report has been filed by the respondent-State, as per which, the prosecutrix was minor. She had been enticed away by the petitioner and was ravished at his hands. She was found to be pregnant when she was recovered as on 01.10.2020. In her statement recorded under Section 164 of Cr.P.C., she had deposed against the petitioner. The petitioner was declared a proclaimed person and had been arrested later on and is in custody since 19.03.2023. There are chances of his absconding again, if extended benefit of bail. Hence, it is argued that the petition does not deserve to be allowed.

5. I have heard learned counsel for the petitioner as well as learned State counsel at considerable length and have gone through the material placed on record.

6. Annexure P-4 is copy of statement recorded by the prosecutrix before the learned trial Court as PW-3 wherein, she is shown to have stated that on 13.08.2020, she had left her house without informing anyone as she

had quarreled with her parents. She had stayed at different places for a period of two months and on 28.09.2020, she had been brought back to her house. She was major at that time. Nothing wrong had happened with her. She stated that the accused had neither enticed her away nor any wrong act done by him with her. She also stated that she had performed marriage with the petitioner on 17.08.2022 in Bihar and a child was also born to them. She with regard to her statement recorded under Section 164 of Cr.P.C., she admitted the recording of the same but when the contents of the statement were read over to her, she denied making any such statement. The prosecutrix was even declared hostile. On request of public prosecutor and was allowed to be cross-examined by him but nothing incriminating could be extracted from her testimony. She insisted that she was major when she had left home and was never kidnapped by the petitioner and that now she was living a happily married life with the petitioner. Though the prosecutrix is claiming that she was major at the time when she had left her house on 13.08.2020 and that she had voluntarily left the guardianship of her parents as on that date and also claimed that her date of birth was 05.01.2002, however, the prosecution is claiming that since in her school record her date of birth was mentioned as 12.07.2005, therefore, she was a minor. Even assuming that if she is a minor and falls within the definition of Child and given under Section 2(d) of POCSO Act, it is also required to be taken into consideration that the petitioner is also only twenty-one years old youth. The statement of the prosecutrix as recorded before the trial Court, *prima facie* indicates that there relationship was consensual. The **High Court of**

Bombay in a recent judgment dated 26.04.2023 passed in bail application No. 997 of 2022 tilted as ‘*Imran Iqbal Shaikh Vs. State of Maharashtra and another*’ had observed that the provisions of POCSO Act have been enacted to protect children from offences of sexual assault, sexual harassment etc. and contained stringent penal provisions as to safeguard the interest and well being of the children. It was further observed that a judge is certainly not to punish minors in romantic or consensual relationship and brand them as criminals. Keeping in view the nature of the testimony of the prosecutrix as recorded before the learned trial Court, the period of incarceration of the petitioner, the fact that he has no criminal antecedents, that the trial is likely to take time and further keeping in view the totality of facts and circumstances of the case but without meaning to make any comment on the merits of case, the same may prejudice the learned trial Court, I am of the considered opinion that the petitioner deserves to be extended benefit of bail. Hence, the petition is allowed and the petitioner is ordered to be released on bail subject to his furnishing personal/surety bonds to the satisfaction of the Chief Judicial Magistrate/ Duty Magistrate concerned.

7. Since the main petition has been allowed, pending application if any is rendered infructuous.

[MANISHA BATRA]
JUDGE

7th March, 2024
Parveen Sharma

1. Whether speaking/ reasoned	:	Yes / No
2. Whether reportable	:	Yes / No