

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

**Criminal Misc. No. M-27700 of 2015
Date of decision: 14.09.2015**

Mohit

..Petitioner

Versus

The State of Punjab

..Respondent

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspapers may be allowed to see judgment? Yes/No**
- 2. To be referred to reporters or not? Yes/No**
- 3. Whether the judgment should be reported in the Digest? Yes/No**

Present: Mr. Gorakh Nath, Advocate
for the petitioner.

Daya Chaudhary, J. (Oral)

This petition has been filed under Section 438 Cr.P.C. for grant of anticipatory bail to the petitioner in case FIR No.243 dated 07.11.2014 registered under Sections 363, 366-A and 120-B of Indian Penal Code and Sections 376, 380, 323 and 342 IPC, which were added later on, at Police Station Salem Tabri, Ludhiana (Punjab).

Learned counsel for the petitioner submits that earlier the petitioner was granted anticipatory bail but subsequently, offences under Sections 376, 380, 323 and 342 IPC were added. The petitioner and prosecutrix solemnized marriage but parents of the prosecutrix were not happy with their marriage. Learned counsel further submits that considering the fact that they have already

married, it cannot be said that the petitioner has committed rape upon the prosecutrix. Moreover, in case the age of the prosecutrix is in the age of discretion and as such, it cannot be said that the offence falls under Section 376 IPC. Learned counsel also submits that after passing of interim order of bail in favour of the petitioner, no new development has taken place and the petitioner is entitled for anticipatory bail even after the addition of Sections 376, 380, 323 and 342 IPC.

Notice of motion.

On the asking of the Court, notice on behalf of the State has been accepted by Ms. Ritu Punj, Addl. AG, Punjab.

Mr. Sandeep Arora, Advocate appears on behalf of the complainant.

Learned State counsel submits that the prosecutrix was less than 18 years of age at the time of marriage and a petition for protection came up for hearing before this Court on 23.12.2014 wherein it has been mentioned that the prosecutrix was minor at the time of filing the petition as well as at the time of solemnization of marriage. A detailed affidavit was also filed wherein it was stated that the prosecutrix was under pressure and threat was given at the instance of the petitioner. By mentioning the specific reasons, even the protection petition was dismissed on 23.12.2014.

Learned counsel appearing for the complainant submits that keeping in view the age of the prosecutrix, the petitioner is not

entitled for anticipatory bail for offence under Section 376 IPC.

Heard arguments of learned counsel for the petitioner, learned State counsel as well as counsel for the complainant.

Admittedly, the prosecutrix was less than 18 years of age at the time of occurrence and Section 375 IPC (Fifthly) has to be invoked as she was less than 18 years of age and consent of minor is not relevant. A wrong averment was made in the petition filed for protection with regard to date of birth of the prosecutrix. The date as well as month were the same but the year was changed. The intention of the petitioner was clear from the fact mentioned in the petition for protection and the same was dismissed on 23.12.2014.

The subsequent development that a contradictory statement has been made by the prosecutrix at the instance of father, is not going to help the petitioner for the reasons mentioned therein in the statement as it has been clearly mentioned that earlier the prosecutrix was under pressure and a threat was given at the instance of the petitioner. Thereafter, she even opted to go with her parents instead of going with the petitioner or his family members.

Accordingly, there is no merit in the contentions raised by learned counsel for the petitioner and the petition being devoid of any merit is dismissed.

14.09.2015
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(DAYA CHAUDHARY)
JUDGE