

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

Crl. Misc. M-40274 of 2016 (O&M)
Date of Decision: 22.11.2016

Davinder Singh and another

...Petitioners

Versus

State of Punjab.

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. P.S. Ahluwalia, dvocate
for the petitioners.

Ms. Bhavna Gupta, DAG Punjab
for respondent-State.

JAISHREE THAKUR, J. (Oral)

Mr. Kawaljyot Singh, Advocate, has put in appearance on behalf of complainant-Inderpal Singh and filed his vakalatnama, which is taken on record.

The instant petition has been filed for grant of regular bail to the petitioners in FIR No.197 dated 06.10.2016 registered at Police Station Kotwali, Patiala, District Patiala under Sections 363, 366-A of the Indian Penal Code and Section 8 of the Protection of Children from Sexual Offences Act, 2012.

The present case came to be registered on the basis of a complaint made by Inderpal Singh, claiming that his daughter has not returned from tuition and could not be traced. He suspected that she had been kidnapped, which led to the filing of the instant FIR. A statement of prosecutrix was recorded under Section 164 Cr.P.C. in which, she specifically named the petitioners, who took her in the car on 05.10.2016 and when they reached Village Rohri, petitioner No.2-Satwinder Singh dropped them and took the vehicle alone. It was mentioned that she spent the night with petitioner No.1-Davinder Singh in a Dargah and next morning, they were apprehended by the police, after Satwinder Singh had joined them.

The complainant/father of the prosecutrix suffered a statement exonerating the petitioners in the present case. The complainant is present in the court today and identified by Mr. Kawaljyot Singh, Advocate. On the asking of the court, the complainant/father of the prosecutrix namely Inderpal Singh stands by his statement in which he has mentioned that the case was registered by him against Davinder Singh and Satiwinder Singh due to misunderstanding and after confirmation on his own level, he has found out that no offence has been committed and would have no objection in case, the bail application is allowed.

Per contra, learned DAG Punjab appearing on behalf of the respondent-State argues that offences under Sections 363, 366-A of the Indian Penal Code and Section 8 of the POSCO Act are made out and the prosecutrix being of a young age, the court should not interfere, while granting bail.

I have heard learned counsel for the parties.

Admittedly, a complaint came to be lodged by father of the prosecutrix, apprehending that she had been kidnapped. A statement has been made by the prosecutrix, admittedly who is under the age of 14 years, who has submitted that she went with the petitioners after she had been informed that her mother was angry. She has admitted spending night at Dargah in the company of Davinder Singh and at the same time has denied that any offence was committed upon her. The parents of the girl in their own wisdom have not permitted the MLR to be conducted and without the said MLR, it would not be possible for any court to reach a conclusion as to whether the young girl had been subjected to any offence. As regards Section 363 of the Indian Penal code, which pertains to kidnapping of a person from lawful guardianship, the same is a bailable offence. So far as Section 366-A of the Indian Penal Code is concerned, it pertains to procuration of a minor girl to seduce illicit relationship, which means inducing a minor under the age of 18 years to come from any place or to do any act with intent that such girl may be or likely to be forced or seduced to illicit intercourse with another person and the said offence is non-bailable and triable by the court of sessions.

In the instant case, father of the prosecutrix himself has made a statement that he has lodged the complaint under misapprehension and he would have no objection, in case, regular bail is granted. The prosecutrix herself has not suffered any such statement which would be indicative of any offence. Without an MLR having been conducted, this court is of the opinion that under the facts and circumstances, as detailed above, regular

bail ought to be granted to the petitioners.

In view of the above, without commenting upon the merits of the case, the petition is allowed and the petitioners are directed to be released on regular bail on execution of adequate personal and surety bonds to the satisfaction of trial Court/Duty Magistrate.

Any observations made hereinabove while granting regular bail would have no bearing in the event challan is presented in the court or the matter is committed for trial.

November 22, 2016
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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No