

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

CRM-M-40362-2017 (O&M)

Date of decision: 12.12.2017

Aamir

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. M.D. Khan, Advocate,
for the petitioner.

Mr. P. P. Chahar, DAG, Haryana.

Mr. Sarfraj Hussain, Advocate,
for the complainant.

Ms. Tanika Goyal, Advocate, for
Mr. Prateek Mahajan, Central Govt. Counsel.

JAISHREE THAKUR, J.

1. This is a petition under section 438 Cr.P.C. for grant of anticipatory bail in case FIR No. 105 dated 18.08.2017 under sections 342/120-B of IPC and Section 4 of POCSO ACT registered at Police Station Women Nuh, District Mewat.

2. Briefly put, FIR No. 105 dated 18.08.2017 under Sections 342/120-B of IPC and Section 4 of POCSO Act was registered at Police Station Women Nuh, District Mewat at the behest of Malu son of Maman resident of Village Sikarpur, Tehsil Tauru, District Mewat who alleged that his daughter was aged about 15 years went out to the field on 17.08.2017

and did not come home till late night. On 18th of August 2017 at about 4:30 A.M. when he received a phone call informing him that his daughter was at the house of Ilyas. He went to the house of Ilyas to take his daughter where he was threatened. He went back again to collect his daughter with his sons. On return, he was informed by his daughter that Aamir the petitioner herein, had forcibly taken her to the *Bajra* field and committed rape upon her and, thereafter, the petitioner called his brother and they took her to their house where again rape was committed upon her.

3. Apprehending arrest, the petitioner applied for anticipatory bail before the Additional Sessions Judge, Nuh stating that he had been falsely implicated and that the victim had admitted in her statement under section 164 Cr.P.C that she left the house of the complainant and performed marriage with the applicant of her own free will and against the wishes of her parents. The bail application was dismissed on 10.10.2017 resulting in the instant petition being filed.

4. Mr. M.D. Khan, learned counsel appearing on behalf of the petitioner vehemently contends that the provisions of the POCSO Act are not applicable in the instant case, since the victim is the major by relying upon Adhaar card which would reflect her date of birth to be 24.07.1998. It is also argued that the petitioner and the daughter of the complainant had solemnised the marriage and thereafter sought protection from this Court by way of **CRM-M-36403 of 2017** which was allowed by order dated 27.09.2017.

5. The petition was contested by the complainant, who argues that his daughter in fact is a minor and her date of birth is reflected to be

10.05.2002. It is argued that his daughter was forcibly abducted and subjected to penetrative sexual assault .

6. As a dispute had arisen about the date of birth of the daughter of the complainant, respondent - State was directed to file a status report regarding the genuineness of the two Adhaar cards as well as the birth certificate that had been relied upon by the counsel for the complainant. Since it had also been argued that the birth certificate relied upon by the complainant was not genuine, as stated by the counsel for the petitioner relying upon a certificate issued by the office of the Registrar of Births and Deaths dated 06.09.2017 that no child was born from the period 2002 to 2004 to the complainant and his wife, a status report was sought.

7. As per the reply filed by the way of affidavit Amit Dhaiya HPS Deputy Superintendent of Police Nuh, the date of birth certificate of the daughter of the complainant was obtained from the Sub Registrar (Births and Deaths) in which the date of birth has been confirmed to be 10.05.2002.

8. In the given circumstances, prima facie, there seems to have been some interpolation in the documents pertaining to date of birth showing the daughter of the complainant to be a major. Serious allegations of an offence under Section 4 of the POCSO Act have been levelled and that too on the statement of the victim to her father the complainant in the FIR.

9. In view of the above, having heard arguments advanced by counsel for the parties, this court is of the opinion that there are serious allegations of kidnapping and penetrative sexual assault upon the minor daughter of the complainant levelled against the petitioner, this court is not inclined to allow this petition for anticipatory bail.

10. This petition is dismissed, however, any observations made herein regarding the date of birth of victim is only for the purposes of denial of bail, and not an opinion on merits.

12.12.2017

Satyawan

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes.
No.