

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

Date of decision: 9.5.2017

1. **CRM-M No. 45689 of 2016(O&M)**

Munasib and othersPetitioners

VERSUS

State of HaryanaRespondent

2. **CRM-M No. 4898 of 2017(O&M)**

Noor MohammadPetitioner

VERSUS

State of HaryanaRespondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Sarfraj Hussain, Advocate for the petitioner(s).

Ms. Dimple Jain, AAG, Haryana.

Mr. Surinder Dagar, Advocate for respondents No.2 and 3.

REKHA MITTAL, J.

This order will dispose of CRM-M No. 45689 of 2016 and 4898 of 2017 as these have emerged out of FIR No.821 dated 16.11.2016 under Sections 363, 366-A, 506 read with Section 34 of the Indian Penal Code, 1860 (in short 'IPC') [offence under Sections 376, 120-B IPC and 6 of the Protection of Children from Sexual Offences Act, 2012 (in short 'POCSO Act') added later] registered at Police Station Sadar Palwal, District Palwal.

For the sake of convenience, facts are taken from CRM-M No.45689 of 2016.

The sole submission made by counsel for the petitioners is that as the alleged kidnapped girl Najmunisha @ Nisha and Munasib @ Munna performed marriage with their free will and filed a petition CRM-M No.41034 of 2016 seeking protection to their lives and liberty decided on 16.11.2016, the aforesaid FIR lodged at the instance of Rafik, paternal uncle of the alleged kidnapped girl and proceedings emanating therefrom are nothing but abuse and misuse of process of law and liable to be quashed.

Counsel for the State of Haryana has submitted that the present petition is liable to be dismissed being pre-mature as the matter is still under investigation. Further argued that victim of the crime recorded her statement indicting the petitioners on the basis whereof, offence under Sections 376, 120-B IPC and 6 of POCSO Act has been added later. It is further argued that in view of statement of the prosecutrix recorded during investigation, plea of the petitioners that the prosecutrix voluntarily performed marriage with petitioner No.1 or she voluntarily filed a petition seeking protection to life and liberty become disputed questions of fact that need to be adjudicated upon on the basis of evidence to be adduced by the parties.

Counsel for respondents No.2 and 3 has echoed the arguments advanced by counsel for the State of Haryana.

I have heard counsel for the parties, perused the paper-book with able assistance rendered by counsel for the parties.

It is undisputed position of the case that the aforesaid FIR lodged at the instance of paternal uncle of the prosecutrix wherein offence under Sections 376, 120-B IPC and 6 of POCSO Act were added later is

still under investigation. The mere fact that a petition was filed before this Court seeking protection to life and liberty by Najmunisha @ Nisha and petitioner No.1 is not sufficient to record a factual finding that Najmunisha @ Nisha according to her free will left her house or performed marriage with petitioner No.1. Perusal of the order dated 16.11.2016 passed by this Court in CRM-M No.41034 of 2016 would make it evident that this Court has not gone into correctness or otherwise of the allegations raised in the petition. The petition was disposed of with a direction to official respondent No.2 to consider and decide the representation of the petitioners within the framework of law. It has further been directed that in case any instance of threat is brought to notice of the police by the petitioners they will act into it expeditiously in accordance with law. Plea of the petitioners that the prosecutrix either voluntarily left her house or performed marriage with petitioner No.1 gets falsified and belied, at this stage, on the basis of her statement dated 28.12.2016 recorded by a Judicial Magistrate under Section 164 Cr.P.C. which has become the basis for adding more grave offences in the FIR.

No other point has been raised.

For the foregoing reasons, the petitions fail and are accordingly dismissed. However, in order to enable the petitioners to seek protection against their arrest, the petitioners shall not be taken in custody for a period of 7 days.

MAY 9, 2017
'D. Gulati'

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned :
Whether reportable :

yes/no
yes/no