

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

CRM-M-29698-2018

Date of decision:-27.7.2018

Malkit Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Ritesh Pandey, Advocate
for the petitioner.

Mr.Dhruv Dayal, Sr.D.A.G, Punjab.

H.S. MADAAN, J.

This petition under Section 438 Cr.P.C. for pre-arrest bail has been filed by the petitioner – Malkit Singh, an accused in FIR No.30 dated 1.5.2018, under Sections 363, 366-A, 380, 120-B IPC and 3 and 4 of Protection of Children from Sexual Offences Act, 2012, registered at Police Station Ghuman, Batala District Gurdaspur.

Briefly stated, facts of the case as per prosecution story are that FIR in question was recorded on the basis of statement of complainant Sukhwinder Kaur wife of Tarsem Singh, resident of Choney, Police Station Ghuman, aged about 40 years wherein she stated that her daughter Kirandeep Kaur had passed matriculation examination in the year 2016 and thereafter was assisting her in household work; that on 30.4.2018 when after taking meals, the entire family had retired to beds at

about 10:30 p.m., Pawandeep Kaur got up for going to bathroom then she saw that Kirandeep Kaur was not there on bed; that Pawandeep Kaur woke up her mother and both of them searched for Kirandeep Kaur but she could not be located; that when almirah placed in the room of complainant was checked, then Rs.17,000/- placed therein were found to be missing. According to the complainant, a few days earlier her daughter Kirandeep Kaur had told her that Sandeep Singh – nephew and Balbir Kaur alias Gopi – niece of complainant were asking Kirandeep Kaur to perform marriage with Malkiat Singh son of Sukhdev Singh alias Maddu, resident of Khujala (present petitioner). According to the complainant, she had told Kirandeep Kaur that she was still a child and when she attained majority then she would be married of with a good boy. In statement to the police, the complainant stated that she was very confident that Sandeep Singh son of Gurnam Singh and Balbir Kaur alias Gopi daughter of Gurnam Singh, residents of Dharamkot in connivance with Malkiat Singh alias Maddu son of Sukhdev Singh, resident of Khujala had kidnapped Kirandeep Kaur by giving her allurements of marriage with Malkiat Singh @ Maddu.

Formal FIR was recorded. Apprehending his arrest in this case, the petitioner had approached the Court of Sessions seeking grant of pre-arrest bail by filing an application, however, his such request was declined by learned Additional Sessions Judge, Gurdaspur vide order dated 7.7.2018. As such, the petitioner has approached this Court asking for the similar relief.

Notice of the petition was given to respondent – State, which

put in appearance through counsel.

I have heard learned counsel for the parties besides going through the records and I do not find any merit in the present petition.

The petitioner is the main accused, who as per the prosecution story had kidnapped the victim with an intention to marry her, rather giving her allurements to marriage. Admittedly, the victim is a minor. Though it is stated that Malkit Singh had got married with the victim in a temple and both of them had approached this Court seeking protection but a perusal of order dated 8.5.2018 passed by this Court goes to show that it was observed that since petitioner No.2 (victim) is aged about 17 years and 3 months, therefore, she was not competent to contract a valid marriage, as such she was directed to be sent to Nari Niketan, Chandigarh till she attained the age of majority. Thus the marriage is also not as per requirements of valid marriage under Section 5 of the Hindu Marriage Act. Therefore, the petitioner cannot take up a plea that the victim was a consenting party and she had got marriage with him of her own will since consent of a minor is no consent in the eyes of law.

Learned counsel for the petitioner has referred to citation **S.Varadarajan Versus State of Madras, 1965 AIR(SC) 942** by the Apex Court in support of his contention that offence of kidnapping is not disclosed against the petitioner. But a perusal of this authority goes to show that the observations had been made while determining the criminal liability of accused on merits after trial. Here we are dealing with a case of grant of pre-arrest bail. The facts of this case are quite different from the facts of the authority. The question here to be seen is whether custodial

interrogation of the petitioner is required, the answer has to be in affirmative. The custodial interrogation of the petitioner is definitely required for complete and effective investigation so as to find out as to how and in what manner the petitioner had taken the minor girl along with him on allurement of marriage, the persons who helped him in doing so and other necessary details. In case custodial interrogation of the petitioner is denied to the investigating agency that would leave many loose ends and gaps in the investigation affecting the investigation being carried out adversely which is not called for.

Thus finding no merit in the petition, the same stands dismissed.

27.7.2018
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No