

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

CRM-M-30246-2018

Date of decision:-8.10.2018

Gurshan Singh @ Vicky

...Petitioner

Versus

State of Punjab and another

...Respondents

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

Present: Mr.L.S.Lakhanpal, Advocate
for the petitioner.

Ms.Samina Dhir, DAG, Punjab.

H.S. MADAAN, J.

This petition for regular bail has been filed by petitioner – Gurshan Singh @ Vicky – an accused in FIR No.93 dated 6.9.2017 under Sections 363, 366-A IPC(Section 376 IPC and Sections 3 and 4 of POCSO Act added later on), registered at Police Station Nurmehal, District Jalandhar.

Briefly stated, the facts of the case, as per the prosecution story are that the FIR in question was recorded on the basis of statement

of complainant Sarabjit Kaur wife of Tashwinder Singh, resident of Bhangala, which she got recorded with the police on 6.9.2017 stating therein that on 2.9.2017 at about 10:00 a.m., she had gone to her neighbourhood while her daughter the prosecutrix (name withheld to protect her identity in view of Section 228-A IPC and as per the directions given by the Hon'ble Apex Court in case titled State of Karnataka Vs. Puttaraja, 2004(1) RCR(Cri.) Supreme Court, 113 (SC) and referred to as *the prosecutrix*) with date of birth 21.9.2000 was at home; when she returned, she did not find her said daughter there and as a matter of fact, she had been enticed away by accused Gurshan Singh @ Vicky on allurement of marriage.

After registration of the FIR, the matter was investigated. It came out that Gurshan Singh @ Vicky and the prosecutrix had filed a petition in this Court stating that they were a run away couple having performed marriage against wishes of family members of the prosecutrix seeking protection, therein the prosecutrix had tendered her sworn affidavit mentioning her date of birth as 21.9.1999. The petition has been disposed of by this Court vide order dated 11.10.2017. Accused was arrested in this case on 21.12.2017. The prosecutrix was recovered. Her statement was got recorded under Section 164 Cr.P.C. She was got medically examined. The date of birth of the prosecutrix was got verified from Government Girls Senior Secondary School, Jandiala (Jalandhar), which showed that the same was 21.9.2000. After completion of investigation and other formalities challan was filed. After presentation of challan, charge has been framed and the case is fixed for prosecution

evidence. The petitioner/accused had filed an application for regular bail in the Court of Sessions, which was declined by learned Additional Sessions Judge, Jalandhar vide order dated 21.5.2018, as such, he has approached this Court with the same request.

Notice of the petition was given to respondent – State and counsel representing the State has put in appearance. The complainant has also appeared through counsel.

I have heard learned counsel for the parties besides going through the record.

As it comes out from the record, the prosecutrix was a minor at the time of incident, therefore the question of she being a consenting party in going with the petitioner/accused or having sexual intercourse with him does not arise since the consent of a minor is no consent in the eyes of law. Therefore, statement made by the prosecutrix under Section 164 Cr.P.C. in that regard and her filing of a petition before this Court seeking protection does not help the petitioner in any manner. The petitioner had taken away a minor girl from the custody of her parents giving an allurement of marriage, as such, the offence of kidnapping is made out. Similarly offence under Section 376 IPC as well as offences under Sections 3 and 4 of POCSO Act also come out to be there. The trial is going on, which is likely to be concluded in near future. The culpability of the accused shall be determined during the trial. The apprehension expressed by the State counsel that if petitioner is granted bail, there is every likelihood to his absconding and even tampering with the prosecution evidence cannot be brushed aside lightly.

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

8.10.2018

Brij

(H.S.MADAAN)

JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No