

CRM-M-30318-2018

Date of Decision : 19.11.2018

Markas Masih

.....Petitioner

versus

State of Punjab

....Respondent

CORAM : HON'BLE MR. JUSTICE FATEH DEEP SINGH**Present:** Mr. Karan Chaudhary, Advocate for
Mr. Inderjit Sharma, Advocate
for the petitioner.Mr. C.L. Pawar, Sr. DAG, Punjab
for the respondent-State.Mr. Vipin Mahajan, Advocate
for the complainant.**FATEH DEEP SINGH, J. (ORAL)**

The allegations against petitioner-Marcos Masih (wrongly spelled as Markas) in this first anticipatory bail under Section 438 Cr.P.C. filed in a case bearing FIR No.28 dated 07.04.2018 under Sections 363, 366-A- 376 and 120-B of the Indian Penal Code read with Section 4 of the POCSO Act, 2012 registered at Police Station Tibber Tehsil and District Gurdaspur are that daughter of complainant-Emmanuel Masih, recorded in the statement of prosecutrix, is aged 16 ½ years and that she has passed 9th class and was doing household chores and during the course of her life, she came in contact with Marcos Masih and John Masih @ Lucky and the latter

used to promise the prosecutrix to marry her and on this allurement on 03.04.2018 at around 2:00 P.M., it is alleged that co-accused/non-applicant-John Masih @ Lucky visited the house of the prosecutrix at the behest of co-accused, who is the present petitioner-Marcos Masih, and took her away on the promise of marriage to a desolate place and there committed rape upon her against her consent. Subsequently, prosecutrix came to know that she was taken in a bus to Jammu and thereafter, to different places where she was again subjected to the same crime and on getting opportunity, she managed to escape.

Learned counsel for the petitioner submits that it is the admitted stand of the prosecutrix in her initial stand by way of FIR which does not lays any allegation against the petitioner of having actively participated in the crime and that it was during the subsequent statement under Section 164 Cr.P.C, the allegation against the petitioner has come about. It was a case of consensual relationship between the boy and a girl in which petitioner has no role to play and is distantly related to the girl side and that nothing is to be recovered from him.

Learned State counsel, on instructions from ASI as well as assisted by Mr. Vipin Mahajan, Advocate for the complainant, the bail application is sought to be opposed that subsequent to the statement under Section 164 Cr.P.C., the petitioner has attributed specific role in commission of the crime of rape and therefore, the nature and gravity of offence committed disentitles the petitioner to any relief.

After going through the arguments of both the sides,

admittedly, there is no role attributed to petitioner-Marcos Masih in the crime as per the FIR and subsequently, belatedly allegations have come about and thus, a debatable issue having arisen over the applicability of these offences which is subject to judicial adjudication and the culpability, if any, shall be determined by the Trial Court.

In view of what has been stated above and in the light of orders passed earlier, the interim bail granted to the petitioner vide order dated 03.08.2018 is made absolute however he shall abide by the conditions specified under Section 438 (2) Cr.P.C. till submission of report under Section 173 Cr.P.C. (challan). Thereafter, the petitioner will be permitted to furnish regular bail bonds to the satisfaction of the trial Court.

The petition stands disposed off accordingly.

19.11.2018

Neha

**(FATEH DEEP SINGH)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No