

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

CRM-M No. 31639 of 2018

DATE OF DECISION :- September 21, 2018

Nitish Kumar @ Munna

...Petitioner

Versus

State of Punjab

...Respondent

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

Present:- Mr. Munish Puri, Advocate for the petitioner.

Mr. Dhruv Dayal, Sr. DAG, Punjab.

Mr. Sanjeev Sharma, Advocate for respondent no. 2.

This petition for regular bail has been filed by petitioner Nitish Kumar @ Munna, an accused in F.I.R. No. 143 dated 3.11.2017 for offence under Sections 363/366-A/376 IPC and Section 8 of POCSO Act, 2012 registered with Police Station Division No. 2, District Pathankot.

Briefly stated facts of the case as per prosecution story are that F.I.R. in question was recorded on the basis of statement of complainant (name withheld to conceal her identity) daughter of Ashwani Kumar, resident of H.No. 203, 4 Marla Quarter, Mohalla Ram Nagar, Pathankot, aged about 17 years in which she stated that Nitish Kumar @ Munna residing in their area used to roam near her house, had love talks with her and asked her to marry him. She was taken in by his words. On 30.10.2017 Nitish Kumar @ Munna asked her to come at Saingarh Chowk. She

accordingly went there and found Nitish Kumar @ Munna to be waiting for her. Time was about 10 A.M.. Nitish Kumar @ Munna gave her allurement of contracting marriage with her and took her from Saingarh Chowk to Jammu. They were seen by Rohit Sayal MC. They had gone to Jammu in a Bus and at Jammu the accused kept the complainant-prosecutrix in some room where they remained for 4-5 days. However, accused did not committed any rape etc. with her. However, getting a chance she returned home in a Bus and narrated the incident to her mother Lata. Then she accompanied by her mother Lata went to the Police Station and lodged the report.

Formal F.I.R. was registered. The accused was arrested on 28.5.2018. He had moved an application for regular bail to the Court of Sessions which was dismissed by Additional Sessions Judge, Pathankot vide order dated 21.7.2018, as such he has approached this Court by way of filing the present petition craving of grant of similar relief which is being opposed by learned State counsel

I have heard learned counsel for the petitioner, learned counsel for respondent no. 2 and learned State counsel besides going through the record.

Learned counsel for the petitioner has contended that the prosecutrix was in love with the petitioner and she had gone with the accused of her own. She was a major at that time. Her date of birth being 20.10.1999 and not 16.10.2000 as claimed by the prosecution and now the two families have agreed for marriage of the prosecutrix with the accused. Therefore, he be granted bail. Whereas the request is being opposed by

learned State counsel.

In the written reply filed on behalf of respondent no. 1 it is mentioned that as per school record of the prosecutrix her date of birth is 16.10.2000. However, as per birth certificate Geeta Devi daughter of Ashwani Kumar is having date of birth 17.10.1999. Name of her mother is mentioned as Lata Rani. Ashwani Kumar father of the prosecutrix has furnished an affidavit that date of birth of prosecutrix is 17.10.1999 being a first child; earlier her grand parents had named her as Geeta Devi and thereafter her name was changed as Ria which was entered in school certificate; that a wrong date of birth was given inadvertently. As per police verification a compromise is said to have been effected between the parties. The parents of the prosecutrix have confirmed this fact.

Under the circumstances, I find that the petition deserves to be allowed. The same is accepted and the petitioner is ordered to be released on bail on furnishing bail bond and surety bond to the satisfaction of the learned trial Court/CJM/Duty Magistrate, Pathankot subject to the following conditions : -

- (i) he shall appear in the Court on each and every date of hearing.
- (ii) he shall not give any threat or intimidation to the prosecution witnesses.
- (iii) he shall not leave India without prior permission of the Court and shall surrender his Passport, if he has got one otherwise to furnish affidavit in that regard.

In addition to that the trial Court may impose any term and

condition found suitable to ensure that the petitioner does not abscond and interfere in the trial.

In case the petitioner violates any term and condition on which the bail has been granted to him, the order shall be liable to be withdrawn.

(H.S. MADAAN)
JUDGE

September 21, 2018
p.singh

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No