

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

CRM-M-35326-2018

Date of decision:-4.10.2018

Indersen Kumar

...Petitioner

Versus

State of Haryana

...Respondent

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

Present: Mr.C.S. Bagri , Advocate
for the petitioner.

Ms.Aditi Girdhar, AAG, Haryana.

H.S. MADAAN, J.

This petition for regular bail has been filed by petitioner –
Indersen Kumar – an accused in FIR No.35 dated 16.1.2018, under
Sectins 346, 363, 366-A IPC, registered at Police Station City,
Bahadurgarh, District Jhajjar.

Briefly stated, the facts of the case, as per the prosecution
story are that complainant Ram Parkash son of Bahore Lal, resident of
Sumulia Post & P.S. Puwapa, District Shahjahanpur, U.P. had submitted a

written complaint addressed to SHO, Police Station City, Bahadurgarh, District Jhajjar on 16.1.2018 contending therein that on 15.1.2018 at about 9:00 p.m. his daughter (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*) aged about 16 years had left home and while doing so, she had taken away Rs.20,000/- lying in the house.

On the basis of that complaint, formal FIR was registered. The investigation in the case started. The prosecutrix was recovered on 13.3.2018. Her statement was got recorded under Section 164 Cr.P.C. wherein, she contended that she had married the accused of her own and does not want to live with her parents. However, as a result of counseling done by the Child Welfare Committee, Jhajjar, she became ready to accompany her parents. Accordingly, her custody was entrusted to them. The matter was investigated, during the course of which, the date of birth of the victim was found to be 18.3.2003, as per School Leaving Certificate, in that way, she was to be aged less than 15 years at the time of incident.

Accused was also arrested in this case on 16.3.2018. After completion of investigation and other formalities, challan against the accused has since been filed in the Court. He had filed an application for regular bail in the Court of Sessions, which was declined by learned Additional Sessions Judge, Exclusive Court, Jhajjar vide order dated 9.7.2018, 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.

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

Learned counsel for the petitioner has argued that it is a case of run away couple inasmuch as the prosecutrix had gone with the petitioner/accused of her own and she had got married with him of her own free will, resided with him for about two months and while her statement was recorded under Section 164 Cr.P.C. by Judicial Magistrate, she had categorically stated that she has got married with petitioner with her consent and wants to live with him and had refused to accompany her parents, though later on, she was persuaded to do so, therefore, the petitioner be granted concession of regular bail since the conclusion of trial is likely to take considerable time.

Whereas the request is being opposed by learned State counsel vehemently.

From the School Leaving Certificate placed on record by the prosecutrix, it comes out that her date of birth is 18.3.2003, in that way at the time of incident on 15.1.2018, she was aged a little more than 15 years, as such a minor. The consent of minor is no consent in the eyes of law. The very fact that the petitioner had taken the prosecutrix out of custody of her parents without their consent completes the offence of kidnapping and he has done so while giving her allurements of marriage, keeping her along for a period of two months.

Thus such act and conduct of the petitioner cannot be taken

lightly. The statement of the prosecutrix is yet to be recorded. Along with the gravity and seriousness of allegations against the petitioner, there is apprehension of his trying to tamper with the prosecution evidence and even to abscond, if granted bail. The trial against the petitioner is likely to be concluded in near future.

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

4.10.2018
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No