

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

CRM-M-36254-2018

Date of decision:-28.9.2018

Shamsher Singh

...Petitioner

Versus

State of Punjab

...Respondent

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

Present: Mr.Manish Prabhaker, Advocate
for the petitioner.

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

H.S. MADAAN, J.

This petition for regular bail has been filed by petitioner – Shamsher Singh – an accused in FIR No.48 dated 31.5.2018, under Sections 363, 366-A, 494 IPC and Section 8 of POCSO Act, 2012, registered at Police Station Maqbool Pura, Amritsar.

Briefly stated, facts of the case, as per the prosecution story, are that complainant Neetu mother of the victim got recorded the FIR in question on 31.5.2018 by making statement to the police submitting

therein that her minor 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*') was missing from home and she had an apprehension that somebody had taken away her by giving an allurement of marriage.

After registration of the FIR, the investigation in the case started. The complainant made a supplementary statement to the police that her said daughter – the prosecutrix had been taken away by her relative Shamsher Singh by giving her allurement of marriage. As per school Leaving Certificate of prosecutrix provided to the Investigating Officer by the complainant, her date of birth was 9.9.2003, in that way she was minor aged about 15 years at the time of the incident. On 9.6.2018, the prosecutrix was produced before the police by Sukhdev Singh and his wife Balbir Kaur. The prosecutrix stated that she did not want to get herself medically examined. She got her statement recorded under Section 164 Cr.P.C., thereafter, she was sent to Children Home, Gandhi Vaneeta Ashram, Jalandhar. Accused was arrested in this case on 9.6.2018. On 7.7.2018, Pawandeep Kaur, first wife of petitioner joined the investigation and in her statement, she stated that Shamsher Singh had solemnized marriage with her cousin/minor prosecutrix without divorcing her. Therefore, offence under Section 494 IPC was added. The challan has been filed against the petitioner/accused and he is facing trial. He had filed an application for regular bail in the Court of Sessions, which was declined by learned Additional Sessions Judge, Amritsar vide order dated

26.7.2018, 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.

The allegations against the petitioner are very grave and serious. The petitioner/accused, a married person had kidnapped a young girl giving her allurements of marriage, which he could not do in view of subsistence of his first marriage. The consent of the prosecutrix is immaterial in this case as she happens to be a minor girl. The very fact that the petitioner had taken away the prosecutrix from the custody of her parents completes the offence of kidnapping. It also comes out that he did so by giving false promise of marriage with the prosecutrix, which he could not legally perform in view of the fact that his first marriage is still subsisting. The challan against the petitioner has since been filed and the trial is going on. His guilt shall be determined during the trial. 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.

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

28.9.2018
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No