

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

CRM-M No.1146 of 2019

Date of decision: 30th January, 2019

Binder @ Joginder @ Dama

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Abhimanyu Singh, Advocate for the petitioner.

Mr. Amrik Narwal, Dy. Advocate General, Haryana
for the respondent/State.

FATEH DEEP SINGH, J.

This order shall dispose off first regular bail application of accused petitioner Binder alias Joginder alias Dama (hereinafter referred to as 'Binder') under Section 439 Cr.P.C. in case bearing FIR No.212 dated 04.08.2018 under Sections 363, 366-A, 376(2)(n), 506, 451, 120-B IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012 pertaining to Police Station Bawani Khera, District Bhiwani.

The facts that are necessitated are that the present case was got registered by mother of a minor girl. In her complaint, she stated that her daughter aged around 17 years has been kidnapped by accused petitioner Binder on 03.08.2018 around 4:00/5:00 a.m. by alluring her. On recovery of the girl, she appeared before the Judicial Magistrate 1st Class, Bhiwani and made statement on 16.08.2018 stating that she left her home on her own and that on 10.08.2018 she had solemnized

marriage with the petitioner and even refused to get herself medically examined. However, finding the girl to be minor, she was handed over to her parents and on 18.09.2018 the victim moved an application before the higher authorities leveling allegations that the accused petitioner along with his co-accused non-applicants namely Shiv Parshad and Savita had took her forcibly in a vehicle to Delhi and returned back and thereafter, the accused prepared forged and fabricated documents showing her to be of married status. She alleged that accused petitioner has committed rape with her thrice against her will and consent.

Learned counsel for the petitioner Mr. Abhimanyu Singh, Advocate has contended that the very first statement of the prosecutrix under Section 164 Cr.P.C. exonerates the accused of any offence and that even her medico legal report/chemical examination report does not bear out any offence of rape having been committed and nothing has come in the report of the chemical examiner to show presence of spermatozoa and that the petitioner is behind bars since a long time.

On behalf of the State, Mr. Amrik Narwal, learned Deputy Advocate General, Haryana on instructions from ASI Madan Singh, Police Station Bawani Khera, District Bhiwani has opposed the bail on the grounds that the girl was a minor as per the documentary proof and has been enticed and forcibly taken away from her home while her father was away at odd hours of the day in a vehicle and repeatedly raped against her wishes. It is contended that the girl subsequently in her

statement and complaint has levelled allegations of forcible rape as well as threatening her and in view of the heinousness of the offense and seriousness of allegations disentitles the petitioner to any relief.

Appreciating the submissions, it is by no means displaced by any of the sides that the girl at the time of commission of offence was a minor. The girl in her written complaint has levelled allegations of kidnapping and rape against the accused. The very effect of her first statement under Section 164 Cr.P.C. and subsequent stand in her complaint are matters which can only be gone into at the time of trial. The girl claims that she was threatened and being a minor and her claim that it was collusion of the police in not getting her medically examined and in her subsequent statement under Section 164 Cr.P.C. has again levelled allegations against the accused, are matters of much significance. More so, spermatozoa after a long period of time certainly is not expected. The trial is underway and the apprehension expressed by the State that if allowed bail the petitioner might influence the investigation and stifle the trial, is not unfounded. In the light of seriousness of the offence, no ground is made out for grant of bail. Finding no merit, the petition stands dismissed.

(FATEH DEEP SINGH)
JUDGE

January 30, 2019

rps

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No