

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

Criminal Misc. No.M-7416 of 2019

Date of Decision: 11.04.2019

Gulzar Singh

...Petitioner(s)

Versus

State of Punjab & another

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Mr. Ashish Yadav, Advocate for
Mr. Mohit Garg, Advocate
for the petitioner.

Mr. Rana Harjasdeep Singh, DAG, Punjab.

Mr. Neeraj Yadav, Advocate
for the complainant.

HARI PAL VERMA, J. (Oral)

Prayer in the present petition filed under Section 438 of the Code of Criminal Procedure, 1973 is for grant of anticipatory bail to the petitioner in case FIR No.196 dated 30.08.2018 under Sections 363, 366-A, 376 IPC and Sections 4 and 6 POCSO Act registered at Police Station Tripuri, District Patiala.

The aforesaid FIR was registered at the behest of complainant-Daler Singh, who is brother of the prosecutrix and doing labour work. As per the FIR, on 24.08.2018, Preet Kaur, who is about 15 years of age, left her house without disclosing anything. The petitioner, who is their

neighbour, has taken away his sister with the help of his mother Kailasho on the pretext of marriage.

Learned counsel for the petitioner has argued that the prosecutrix has left her house at her own, as there was some family dispute. The father of the prosecutrix has given an affidavit that he disowns his daughter from the movable and immovable properties and he has stopped every dealing with her. She is not under his control. He has further argued that petitioner has been booked for offence under Sections 376 IPC and Sections 4 and 6 POCSO Act despite the fact that the prosecutrix has refused for her medical examination on 06.09.2018 i.e. the date when the prosecutrix was allegedly recovered. The prosecutrix in her statement under Section 164 CrPC has stated that she has left her home voluntarily. Nothing is required to be recovered from the petitioner and therefore, he deserves to be admitted on bail.

On the other hand, learned counsel for the complainant as well as learned State counsel have argued that the prosecutrix is about 15 years of age and she has been enticed by the petitioner, who is about 37 years of age. The statement of the prosecutrix that she left her home voluntarily is of no effect, when she is about 14 years of age.

I have heard learned counsel for the parties.

The prosecutrix went missing from her house on 24.08.2018 and the matter was reported to the police and accordingly, the present FIR was registered. She was produced before the Illaqa Magistrate. Though in her statement under Section 164 CrPC, the prosecutrix has stated that she left home at her own without informing her parents, but in her statement

under Section 161 CrPC, recorded on 06.09.2018, she has stated that she has been subjected to sexual intercourse against her wishes by Gulzar Singh. The statement of the prosecutrix that she left her home voluntarily is of no help to the accused, as she is minor about 15 years of age.

Considering the age of the prosecutrix, who is 15 years old and the petitioner, who is about 37 years of age and the fact that there is specific allegation that the petitioner has taken away the prosecutrix with the help of his mother, this Court finds that the petitioner does not deserves to be extended the benefit of anticipatory bail.

Accordingly, the present petition is dismissed.

April 11, 2019
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(HARI PAL VERMA)
JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No