

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Misc. No. M-14293 of 2019 (O&M)
Date of decision : April 04, 2019

Hasmuddin

....Petitioner

versus

State of Haryana

....Respondent

Coram: Hon'ble Mr. Justice Fateh Deep Singh

Present : Mr. Kunal Dawar, Advocate, for the petitioner
Mr. Amrik Narwal, DAG Haryana for the State

Fateh Deep Singh, J. (Oral)

This is second regular bail application by accused-petitioner Hasmuddin, first having been dismissed by this Court vide order dated 15.3.2019.

The present case was got registered by Iqbal father of a girl aged around 17 years and 06 months. The complainant has alleged that his daughter has been enticed and taken away by the accused leading to the registration of the present case. The prosecutrix was thereafter recovered on 13.9.2018 and her statement under Section 161 Cr.P.C. including supplementary and under

Section 164 Cr.P.C. were got recorded who levelled allegations against the petitioner for having befriended the prosecutrix had enticed and taken her away in a train to Mumbai and where her signatures were obtained and she was defiled.

Mr. Kunal Dawar, counsel for the petitioner contends that though the petitioner under the general law is denoted to be a minor but under the Muslim Personal Law being above the age of puberty (15 years) was free to enter into a wedlock. It is argued that as per the documents declaration of marriage Annexure P/3 and Nikah Nama Annexure P/4, they have entered into a wedlock. It is argued that the girl initially did not level any allegations and subsequently a false case has been brought about by manipulating her subsequent statements. Counsel for the petitioner has placed reliance on **Yunus Khan vs State of Haryana & ors., 2014(3) R.C.R. (Criminal) 518** to hammer home the point that a Muslim minor girl who otherwise has attained the age of puberty if voluntarily marries a Muslim boy according to Muslim rites, the marriage is governed by the Personal Law of the Muslims arguing that Prohibition of Child Marriage Act, 2006 (in short, the Act) does not prohibit the same, submitting that the petitioner is behind the bars since a long time, thus, entitles him to bail.

Mr. Amrik Narwal, learned State counsel has stoutly

opposed the grant of the relief firstly on the ground that the girl by all means was minor and that in her statements by the own stand of the prosecutrix Annexure P/2 and under Section 164 Cr.P.C. Annexure P/5 had alleged that the accused had forced him upon her, contending that if allowed bail, the petitioner would influence the trial which is under way.

Admittedly the girl at the time of alleged occurrence was above the age of 16 years but below the age of 18 years. Though under the Personal Law applicable to Muslims age of puberty i.e. marriageable age is 15 years, however, in a Division Bench view of Hon'ble Madurai Bench of Madras High Court in **M. Mohamed Abbas vs The Chief Secretary, Govt. of Tamil Nadu and Ors., 2015(3) R.C.R. (Civil) 1017**, had in detail enunciated the reasons behind the enactment of the Act and further held that the Act cannot be construed to be affecting the rights of a Muslim girl, holding out that while deciding the age factor of a girl and boy who are bride and bridegroom in the marriage, the court cannot ignore the provisions of General Law of the Act. The Hon'ble Apex Court in **J.K. Cotton Spinning and Weaving Mills Co. Ltd. vs State of U.P. and others, 1961 AIR (SC) 1170** while construing the ambit of general provisions and special provisions have clearly laid down that the rules of construction illustrates that in case of conflict over special provisions

and general provisions which is case in the present matter, specific provisions prevails over the general provisions unless and until there is no specific provision where the general law would come about. Section 375 IPC defines an offence of rape and under the seventh description, sixthly is reproduced below:-

xxx xxx xxx xxx xxx xxx xxx

(6) With or without her consent, when she is under eighteen years of age.

xxx xxx xxx xxx xxx xxx xxx

Further-more in **Independent Thought vs Union of India and Anr., 2017(4) R.C.R.(Criminal) 595**, Hon'ble Apex Court in a similar situation had considered the law in a conflict with the provisions of the Protection of Children from Sexual Offences Act, 2012. The victim in statement made in the presence of Legal Aid Counsel Annexure P/2 has clearly stated that there was no consummation of marriage between them and the accused had forced him upon her. Further-more even in her stand under Section 164 Cr.P.C. Annexure P/5, she has stated before the learned Judicial Magistrate, Faridabad that the accused has forced himself upon her. The claim of Mr. Kunal Dawar that in Annexure P/2 the girl has stated that they went to Mumbari Court and over there they solemnized the marriage/Nikah and even performed the court marriage, could not be supported as the declaration of marriage is before the Notary Public

and the Nikah Nama Annexure P/4 are not supportive of the same and appears to be unilateral one. The ratio laid down in **Yunus Khan's** case (supra) cited by the counsel for the petitioner do not comes to the aid of the petitioner side in view of legal as well as factual disparity.

The allegations of the prosecution and the stand of the victim are clear indicators that how the minor girl has been taken in by grown up petitioner. The apprehension of the State that if allowed bail, the petitioner will influence the trial are certainly not unfounded. Having no merit, the present petition stands dismissed.

April 04, 2019
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(Fateh Deep Singh)
Judge

Whether speaking/reasoned ?
Whether Reportable ?

Yes/No
Yes/No