

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

216

CRM-M-19247-2019

Date of Decision:03.05.2019

Deepak Kumar @ Sumbha

.....Petitioner

Versus

State of Punjab

.....Respondent

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

**Present: Mr. Vipin Mahajan, Advocate,
for the petitioner.**

Mr. Rana Harjasdeep Singh, D.A.G., Punjab.

HARI PAL VERMA, J.(Oral)

Prayer in this petition filed under Section 439 Cr.P.C. is for grant of regular bail to the petitioner in case FIR No.140 dated 08.11.2015 under Sections 376, 363, 366 IPC and Section 4 of the POCSO Act, 2012, registered at Police Station Division No.2, Pathankot, District Pathankot.

The aforesaid FIR was registered on the statement of complainant-Soni that his daughter Shikha who is studying in 8th class in Govt. School, near Shiv Palace, Pathankot and is about 16/17 years of age, she left for school on 07.11.2015 at about 08.30 AM as per routine. But she did not return home till evening, for which necessary search was carried out. The complainant has come to know that his daughter was enticed away by petitioner-Deepak Kumar @ Sumbha.

Learned counsel for the petitioner has argued that apart from

a statement before the police under Section 161 Cr.P.C., wherein she has stated that she is about 19 years of age and on 11.07.2017, she has solemnized marriage with the petitioner with her free will and consent. Further, after marriage, her parents and in-laws families have also accepted their matrimonial alliance and presently she is living in the petitioner's (husband) house. He states that similar statement was made by the prosecutrix under Section 164 Cr.P.C. Even the police while submitting the challan has incorporated the version so made in her statement under Section 161 Cr.P.C. as well as Section 164 Cr.P.C. He further states that despite there being statement of the prosecutrix under Sections 161 and 164 Cr.P.C., police has submitted the challan. Therefore, when the prosecutrix herself is living in the matrimonial home and has come forward to make a statement in favour of the petitioner that she has solemnized the marriage without any pressure, custody of the petitioner is not required in the case any more.

Learned State Counsel has filed the custody certificate in Court today, which is taken on record. However, he on instructions from ASI Harjinder Singh states that on the relevant date when the offence was committed, the prosecutrix was less than 18 years of age and even if she has consented for the marriage, it is of no consequence as such consent is no consent in the eyes of law.

Heard learned counsel for the parties.

Considering the fact that the petitioner is in custody since 18.06.2018 and the prosecutrix has come forward to depose in favour of the petitioner by way of statement under Section 161 Cr.P.C. as well as under Section 164 Cr.P.C. that she has solemnized the marriage with the petitioner

and more specifically when she is staying in her matrimonial home, this Court finds that the petitioner deserves to be admitted on regular bail.

Accordingly, the present petition is allowed and the petitioner is admitted on regular bail, subject to furnishing of his bail bonds/surety bonds to the satisfaction of trial Court.

May 03, 2019
seema

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No