

**In The High Court for the States of Punjab and Haryana
At Chandigarh**

(I)

CRM-M-20720-2019 (O&M)

Date of Decision:- 7.11.2019

Ankit Chandila

... Petitioner

Versus

State of Haryana

... Respondent

(II)

CRM-M-26827-2019 (O&M)

Sukhbir

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Munish Behl, Advocate,
for the petitioner in **CRM-M-20720-2019**.

Mr. Kunal Dawar, Advocate,
for the petitioner in **CRM-M-26827-2019**.

Ms. Aditi Girdhar, AAG, Haryana,
assisted by ASI Jagdish.

GURVINDER SINGH GILL, J. (Oral)

CRM-34638-2019 in CRM-M-20720-2019

In view of the reasons mentioned in the application, the same is allowed and the documents annexed with the application are taken on record as Annexures P-5 to P-9 subject to all just exceptions.

CRM-M-20720-2019 & CRM-M-26827-2019

1. This order shall dispose of the above mentioned two petitions wherein petitioners Ankit Chandila and Sukhbir, have approached this Court seeking grant of anticipatory bail in respect of a case registered against them vide FIR No.58, dated 4.2.2019, registered at Police Station Dabua, Faridabad, under Sections 363, 366-A IPC (Section 6 POCSO Act added later on).
2. The FIR was registered at the instance of Tanvir wherein it has been alleged that his daughter Chandni left home on 1.2.2019 during night without informing anyone and that he suspected that somebody had enticed away his daughter on the pretext of marrying her.
3. Subsequently, the petitioners came to be nominated as an accused on the basis of a statement of the prosecutrix, recorded under Section 164 Cr.P.C. on 15.4.2019 wherein apart from the petitioner she named 4 other persons as co-accused.
4. Learned counsel for the petitioners have submitted that in the present case the complainant's daughter had left her home voluntarily, out of her own will, as would be evident from various statements made by her before various authorities at different points of time including one of the statement recorded in terms of Section 164 Cr.P.C. on

19.3.2019. Learned counsel in this regard has referred to the statement of the prosecutrix recorded before the Women Cell on 19.3.2019 as has been reproduced in his petition which reads as follows:

“Stated that I am a resident of above mentioned address. I am 10th pass. On 01.02.2019 I went away from my house out of my own will and I was disturbed from my family members who used to beat me, therefore, I went away from house and used to reside at a rented house at Sanjay Colony, Faridabad. I worked at a cosmetic shop. No bad act has been committed with me. Today, I have come out of my own will. This statement is being made by me out of my own will. I have got my statement written. I do not wish to go to with my parents. Statement has been read, it is correct.”

5. Learned counsel has next referred to the statement of the prosecutrix recorded in terms of Section 164 Cr.P.C. on 19.3.2019 which reads as follows:

“Question: What do you want to say?
Answer: I do not want to reside with my family members. I want to live my life as per my wish. I want to marry as per my wish.
Question: Do you want to say something more?
Answer: No.”

6. Learned counsel has also drawn the attention of this Court to another statement of the prosecutrix recorded before Child Welfare Committee on 19.3.2019 which reads as follows:

“Question: What is your name? How many members are there your family?
Answer: My name is Chandni. We are five brothers and sisters and I have parents. I am lone sister.

Question: Do you know as to where you are making the statement?

Answer: I am making the statement at Child Welfare Committee.

Question: Are you making the statement without your will or under any pressure?

Answer: I am making this statement without any pressure.

Question: What do you want to say?

Answer: I know a boy named Ankit for last one year and want to marry him. I went away from my house on First February and started residing alone at Jawahar Colony and started working at a cosmetic shop. On 18th March Police located me and brought me at Bal Kalyan Samiti. I want to marry out of my own will.

Question: What do you want now?

Answer: I do not want to go with my parents.”

7. Learned counsel for the petitioner(s) have also drawn the attention of this Court to yet another statement of the victim recorded on 13.4.2019 which was recorded before the Women Cell, wherein for the first time she has alleged that Ankit and Salman had raped her although she had stated that she knew Ankit as he used to come to his *bua*'s house. She further stated therein that it was on 1.2.2019 that one vehicle had come in which Ankit and Salman were sitting and they forcibly took her to the jungle where they forcibly exploited her sexually. She further stated therein that on the next day at about 5 am. she was left at some unknown place where she met one Mam Chand who took her to his house where his wife and daughter were also present and she stayed there for about 1½ months. She further alleged therein that during the said period Mam Chand raped her regularly. She further went on to state that later Mam Chand got her

marriage solemnized forcibly with one Sukhbir who was handicapped from one leg.

8. The learned counsel has submitted that subsequently when the prosecutrix was taken to the hospital for medical examination, she flatly refused to medically examined as has been recorded in the MLR (Annexure P-2). Learned counsel has further submitted that subsequently the parents and other relatives of the prosecutrix brain-washed the prosecutrix and forced her to make another statement under Section 164 Cr.P.C. on 15.4.2019 wherein she has now levelled some allegations of rape against the petitioners.
9. Opposing the petition, learned State counsel has submitted that since the prosecutrix was aged less than 18 years and was aged about 17 ½ years when she was enticed away from her home, no case for grant of anticipatory bail is made out. It has however, been informed that petitioners have already joined investigation.
10. I have considered rival submissions addressed before this court. Although, it does appear that the victim was aged a few months less than 18 years at the time of occurrence but the fact that she has been giving different kind of statements at different points of time and in fact in her statement recorded initially on 19.3.2019 including her statement recorded before the Magistrate, she has not stated a word against the petitioners, would certainly make it debatable as to whether the allegations are truthful or not. In any case since the petitioners have already joined investigation, their custodial interrogation is not warranted. The petitions, as such, are accepted

and interim directions issued vide order dated 7.5.2019 in CRM-M-20720-2019 and interim directions issued vide order dated 14.6.2019 in CRM-M-26827-2019 are made absolute subject to the condition that the petitioners shall appear and join the investigation as and when called upon to do so and cooperate with the Investigating Officer and shall abide by the conditions as provided under Section 438 (2) Cr.P.C.

11. It is, however, clarified that none of the observations made above shall be construed to be an expression on merits of the main case.

November 7, 2019
mohan

(GURVINDER SINGH GILL)
JUDGE

Whether speaking /reasoned	Yes / No
Whether Reportable	Yes / No