

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

215

CRM-M-52262-2018

Date of Decision:06.02.2019

Sandeep Kumar

.....Petitioner

Versus

State of Punjab

.....Respondent

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

**Present: Mr. S.K. Panwar, Advocate,
for the petitioner.**

Mr. Jagmohan Ghumman, D.A.G., Punjab.

**Mr. K.S. Kahlon, Advocate,
for the complainant.**

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 FIR No.24 dated 08.02.2018 under Sections 363, 366 IPC, 1860 (the offence punishable under Section 376 IPC was added later on), registered at Police Station Division-C, District Police Commissionerate Amritsar.

The aforesaid FIR was registered at the behest of Guljar Hasan, who is brother of the prosecutrix aged about 17 years 04 months, a mentally retarded girl. As per FIR on 07.02.2018 at about 07.30 PM, the prosecutrix- Gulshan was having some fever and taken to the doctor for medicine.

While the complainant and his mother were standing in the shop of the doctor, Gulshan was standing on the right side of the shop. Meanwhile,

petitioner-Sandeep Kumar came there on his motorcycle in speedy way and taken away Gulshan while making her to sit on his motorcycle.

Learned counsel for the petitioner has argued that the prosecutrix is married with the petitioner and out of this wedlock, a child has born. The prosecutrix remained with the petitioner at her own free will and consent. Even after attaining the age of 18 years, she has shown her willingness to go with her parents-in-laws and accordingly, her parents-in-laws have moved an application before learned Chief Judicial Magistrate, Jalandhar for her custody. Vide order dated 26.10.2018, learned Chief Judicial Magistrate has handed over the custody of Gulshan to Ramesh Kumar (father of the petitioner) and as on date, the prosecutrix and the child are with the father of the petitioner. She is fully capable to understand what is good and what is bad. The prosecutrix is happily residing with the parents of the petitioner. Petitioner is in custody since 27.08.2018 and the prosecutrix having appeared before the trial court has not supported the case of the prosecution. In this manner, she has been declared hostile.

Learned counsel for the complainant has argued that the prosecutrix-Gulshan is not of sound mind and she needs to be examined by the Medical Board of Doctors, so as to assess her mental state of mind, for which necessary application has already been filed which is pending consideration before the trial court. In case, petitioner is admitted on bail, he may influence the remaining witnesses.

Learned State Counsel has argued that on the relevant date, when the prosecutrix was kidnapped and raped by the petitioner, she was less than 18 years of age and therefore, petitioner is not entitled to be admitted on bail.

Heard learned counsel for the parties.

Petitioner is in custody since 27.08.2018. The prosecutrix has appeared before the trial court and has not supported the case of the prosecution. Rather father of the petitioner has made an application before learned Chief Judicial Magistrate seeking custody of the prosecutrix and vide order dated 26.10.2018, learned Chief Judicial Magistrate, Jalandhar, has handed over the custody of Gulshan to father of the petitioner. The relevant order dated 26.10.2018 is reproduced as under:-

“Application received through judicial service center. It be registered. Gulshan put in appearance and suffered statement that she is willing to go with her father in law. Ramesh Kumar father in law of Gulshan has also come present and suffered statement that he is ready to take custody of his daughter in law namely Gulshan. Gulshan stated to have attained age of majority. In view of directions issued by the Hon'ble High Court in civil writ petition 496 of 2015 decided on 30.03.2015 custody of Gulshan is given to her father in law namely Ramesh Kumar. Even otherwise she is of 18 years and can decided her fate as per her own wish and volition. Application stands disposed of. Intimation in this regard be sent to Children Home, Gandhi Vanita Ashram, Jalandhar to release the applicant namely Gulshan and her custody is handed over to her father in law above stated. File be consigned to record room.”

For the argument of the learned counsel for the complainant that the prosecutrix needs to be examined by the Medical Board, for which an application is pending consideration before the trial court, this Court cannot make any comment as the remedy available to the complainant had already been availed by him, which will be dealt with in accordance with

law.

However, noticing the fact that the petitioner is in custody since 27.08.2018 and the prosecutrix has not supported the case of the prosecution, at this stage 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.

February 06, 2019
seema

(HARI PAL VERMA)
JUDGE

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