

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

**Criminal Misc. No. 28023 of 2019 in/and
Criminal Misc. No. M-31071 of 2019 (O&M)
Date of decision : October 14, 2019**

Sajan and another

....Petitioners

versus

State of Punjab

....Respondent

Coram: Hon'ble Mr. Justice Fateh Deep Singh

Present : Mr. RK Arya, Advocate, for the petitioners

Ms. Sakshi Bakshi, AAG, Punjab for the State with
HC Rajinder Singh, PS Rangar Nangal, District
Gurdaspur

Fateh Deep Singh, J. (Oral)

Initially this second anticipatory bail under Section 438 Cr.P.C. was filed by two petitioners namely Sajan and Vijay Kumar. However, in respect of Sajan, the same was dismissed as withdrawn on 3.10.2019.

The brief allegations have been levelled by foster father of a girl aged around 15 years, a student of 10th class. It is alleged

that during the intervening night of 29/30-5-2019, the victim girl who was sleeping along with the family disappeared. When the family searched for the girl they discovered that a cash of Rs 80,000/- and some gold ornaments too had gone missing. It is subsequently revealed that the girl was enticed and taken away by non-applicant accused Sajan along with present petitioner Vijay Kumar who happens to be brother of the principal accused in connivance with their family members with the intent to solemnize her marriage with Sajan. It was thereafter upon recovery of the girl on 15.8.2019, the girl made statement under Section 164 Cr.P.C. before Judicial Magistrate Ist Class on 15.8.2019 that she has volunteered into a wedlock with accused non-applicant Sajan and had voluntarily left her home.

Mr. RK Arya, counsel for the petitioner-Vijay Kumar inter-alia contends that in her stand before the court in CWP No. 17043 of 2019 Annexure P/2, the girl has sought protection against her parents and that no specific role is attributed to the petitioner who is only burdened with the allegations as he happens to be the brother of the principal accused and there is no specific allegation against him in the commission of the offence.

Learned State counsel has opposed the bail on the

grounds that the similar earlier bail application of the petitioner stood declined on 17.7.2019 and thus, no cause for second prayer on the same very grounds is made out and that in view of the heinousness of the offence disentitles the petitioner to any relief.

Going through the arguments and the records, admittedly the girl happens to be a minor aged around 15 years. As has been observed by this Court in orders dated 21.6.2019 passed in the writ petition filed by the victim and co-accused Sajan, the victim claims to have married co-accused Sajan. No documentary evidence of the same could be placed on the record nor the same is permissible keeping in view the age of the victim. The medical evidence clearly reflects that possibility of sexual intercourse cannot be ruled out. However, as has been fairly conceded to at the bar by the learned State counsel, there is no specific role attributed to the present petitioner Vijay Kumar as far as allegations of rape or his role in elopement of the victim is there. The first bail application of the petitioner has been dismissed as withdrawn and was not decided on merits. In the light of what has been come out, it would be traversity of justice to send petitioner Vijay Kumar behind the bars and nothing is to be recovered and his custodial interrogation is not necessitated.

In the light of the aforesaid, the interim bail granted to

petitioner no. 2-Vijay Kumar vide order dated 3.10.2019 is made absolute till submission of report under Section 173 Cr.P.C. (challan). Thereafter, petitioner no. 2-Vijay Kumar will be permitted to furnish regular bail bonds to the satisfaction of the trial Court. The petitioner no. 2 shall abide by the conditions laid down in Section 438(2) Cr.P.C.

With these observations, the present petition stands disposed off.

October 14, 2019
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(Fateh Deep Singh)
Judge

Whether speaking/reasoned ?
Whether Reportable ?

Yes/No
Yes/No