

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

CRM-M-43066-2019 (O&M)
Date of Decision:- 17.10.2019

Sahkul alias Salman ... Petitioner

Versus

State of Haryana ... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Rajesh Lamba, Advocate, for the petitioner.

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

GURVINDER SINGH GILL, J.

1. Petitioner-Sahkul alias Salman, seeks grant of regular bail in a case registered vide FIR No.58, dated 4.2.2019, registered at Police Station Dabua, District Faridabad, under Sections 363, 366-A IPC and under Section 6 of POCSO Act.
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 petitioner 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 5 other persons as co-accused.

4. Learned counsel for the petitioner has submitted that in the present case the complainant's daughter had left 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. It has further been 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 regarding rape against the petitioner.

8. 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 bail is made out. It has however, been informed that investigation is already complete and challan stands presented.
9. I have considered rival submissions addressed before this court. Keeping in view the various statements made by the prosecutrix before various authorities on 19.3.2019, giving a clean chit to the petitioners, it will certainly be debatable as to whether the prosecutrix had left her home out of her own accord or as to whether she was abducted or kidnapped by the petitioner. In any case, since challan already stands presented and the petitioner has been behind bars since the last more than 5 months, further detention of the petitioner will not serve any useful purpose. The petition, as such, is accepted and petitioner- Sahkul alias Salman be released on regular bail on his furnishing bail bonds/surety bonds to the satisfaction of learned trial Court/Chief Judicial Magistrate/Duty Magistrate, concerned.

October 17, 2019

mohan

(GURVINDER SINGH GILL)
JUDGE

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No