

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH
CRM-M-15680-2020 (O&M)
DATE OF DECISION : 13.08.2020**

Hasim**...Petitioner****Versus****State of Haryana****...Respondent****CORAM : HON'BLE MR. JUSTICE ARUN MONGA**

Present : Mr. S.K.Bawa, Advocate,
for the petitioner.

Mr. Vikrant Pamboo, DAG, Haryana.
(Presence marked through video conference)

ARUN MONGA, J. (ORAL)

This is a petition under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case FIR No.0029 dated 10.02.2019, registered under Section 346 of IPC (Sections 376-D, 506, 120-B, 363, 366 IPC were added later on) at Police Station Dhauj, District Faridabad, Haryana.

2. Allegations per FIR are that on 9.02.2019 complainant's wife (prosecutrix-name withheld) went to agriculture fields where Nisar was already waiting on a Bolero vehicle and she eloped with him, though with her free will. After registration of the FIR, an investigation was conducted but whereabouts of the prosecutrix could not be ascertained. Thereafter, five months later, on 12.07.2019 the prosecutrix got her statement recorded at Women Police Station, NIT Faridabad. She, inter alia, stated that on 09.02.2019, by threatening her, Nisar took her in the Bolero vehicle towards mountains of Sirohi and committed rape upon her. Later, Nisar called his brothers Shamshad and Hasim and they all took her to a mosque forcibly performed her nikah with the accused Nisar. Thereafter, she was brought to village Kapashera, Gurugram, where accused Hasim and Shamshad also committed rape upon her.

When Shamshad and Hasim were taking her to Agra in a vehicle, they stopped at a hotel near Hodel City where, finding an opportunity, she ran away from the vehicle. She then called her maternal uncle, who took her to Faridabad Women Police Station.

3. Learned counsel for the petitioner contends that petitioner has been falsely implicated in the case. It is, in reality, a case of runaway couple. Prosecutrix was earlier forcibly married to the complainant against her wishes and was unhappy with her earlier marriage. Petitioner is the real brother-in-law (Jeeja) of the Nisar. He submits that allegations of wrongful confinement and kidnapping are falsified from statement of victim herself, recorded before the Judicial Registrar of High Court of Rajasthan at Jaipur vide Annexure P-3. She stated that she had performed the run-away marriage with her own free will. He submits that challan against the petitioner has been presented. Petitioner is in custody since 04.01.2020. He further submits that prosecuting agency had relied upon 16 witnesses and none of them has been examined till date.

4. Notice of motion.

5. Mr.Vikrant Pamboo, DAG, Haryana, who has joined the proceedings on service of advance copy of the petition, appears and accepts notice on behalf of State of Haryana.

6. I have heard learned counsel for the petitioner, as well as learned State counsel.

7. The status report filed on behalf of the respondent by way of affidavit of Dalbir Singh, HPS, ACP Mujjesser, District Faridabad reveals that Investigating Officer has verified the factum of marriage of the prosecutrix with Nisar. IO also recorded the statement of Imam/Qazi namely Mohibudin, who solemnized the marriage of the prosecutrix with Nisar.

8. It has also been verified by the IO that petition for protection of life and liberty was jointly filed by the prosecutrix and Nisar before High Court of Rajasthan at Jaipur and pursuant thereto protection was granted.

9. In the aforesaid premise, this Court is of the view that no useful purpose would be served by keeping the petitioner behind the bars. More so, when the investigation of the case is also complete and challan has been presented. The petitioner is stated to be in custody since 04.01.2020. The trial is not likely to commence/conclude any time soon on account of current pandemic conditions caused by Covid-19.

10. In the circumstances, instant petition is allowed. Petitioner is ordered to be released on bail on his furnishing bail bonds and surety bonds to the satisfaction of trial Court/Illaq Magistrate/Duty Magistrate.

(ARUN MONGA)
JUDGE

August 13th 2020
vandana

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No