

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

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**CRM-M-17136-2020 (O&M)
Date of Decision: 27.07.2020.**

Jishan Khan

....Petitioner.

Versus

State of Haryana

....Respondent.

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Kunal Dawar, Advocate for the petitioner.

Mr. Rajiv Goyal, Deputy Advocate General, Haryana.

Mr. Devender Kumar, Advocate for the complainant.

Suvir Sehgal, J. (Oral)

The Court has been convened through video conferencing due to Covid-19 pandemic.

CRM-17866-2020

Prayer made in the application is for placing on record copy of 'Nikahnama' as Annexure P7 and for exemption from filing certified copy thereof.

Application is allowed as prayed for.

CRM-M-17136-2020

Present petition under Section 439 Cr.P.C. is for grant of regular bail to the petitioner during the pendency of trial in case FIR No.29 dated 19.01.2019 under Section 363 IPC (Sections 366A, 368, 420, 506 and 120-B IPC and Section 6 of P.O.C.S.O Act added later on), registered at Police Station City Ballabhgarh, District Faridabad.

Counsel for the petitioner submits that the prosecutrix left her parental home on 17.01.2019 and eloped with the petitioner. The present FIR was registered after two days, on the complaint of the mother of the prosecutrix. He further submits that the prosecutrix and the petitioner performed 'Nikah' on 29.01.2019 (Annexure P7). Thereafter, the petitioner and the prosecutrix approached the Allahabad High Court by jointly filing Writ-C No.4448-2019—Muskan and another Vs. State of U.P. and others, seeking protection of their life and liberty. The petition came up for hearing on 08.12.2019 and 11.02.2019. Counsel had made particular reference to the order dated 11.02.2019 (Annexure P3), wherein it is recorded that the petitioners claim to be major and have married of their own free will and that they are living together as husband and wife. The petition was disposed of by the Allahabad High Court on the same day by observing that the High Court is not inclined to interfere in the matter under Article 226 of the Constitution of India and that it is open to the petitioners to appear before the concerned Magistrate to record their statements.

Counsel for the petitioner has made a reference to a representation dated 18.02.2019 (Annexure P4) addressed to the Inspector Incharge, Police Station Ballabgarh, District Faridabad signed by the prosecutrix, wherein she has categorically stated as under :-

“The mother of applicant had registered a FIR No.29 of 2019, under Section 363 IPC, Police Station Ballabgarh, District Faridabad against the husband of applicant, whereas the applicant has gone alongwith her husband out of her own free will. The applicant has solemnized marriage with her own consent. No force has been used with the applicant. That no

legal proceedings be initiated on the FIR filed by the mother of applicant since it is based on false/ wrong facts. There is a threat to life and property of the applicant and in-laws from the family of applicant. Above persons can commit any untoward occurrence in future upon getting opportunity against the in-laws of the applicant.”

Counsel urges that the petitioner and the prosecutrix stayed together as husband and wife at Faridabad. In December, 2019, there arose a marital discord between them, as a result of which the prosecutrix left the matrimonial home on 28.12.2019. Her statement before the Magistrate under Section 164 Cr.P.C. was recorded thereafter on 06.01.2020. Counsel has relied upon the order dated 11.06.2020 (Annexure P5) passed by this Court in CRM-M-13476-2020—Azad Khan Vs. State of Haryana, wherein the father of the petitioner was granted bail pending trial by this Court. Counsel further submits that the petitioner was arrested on 29.12.2019 and is behind bars since then.

State counsel on instructions from ASI Manoj Kumar, has opposed the petition and filed a status report by way of affidavit of Assistant Commissioner of Police, Ballabhgarh, District Faridabad. He has made a specific reference to the statement of the prosecutrix recorded under Section 164 Cr.P.C. to submit that the prosecutrix was a minor and had been enticed away from her parental home by the petitioner. He submits that the challan was filed on 16.04.2020 and charges were framed on the same day but the statements of prosecution witnesses are yet to be examined.

I have considered the rival submissions of the parties.

Keeping in view the background and the fact that the petitioner is in custody for last 07 months and the trial of the case will take some time, further detention of the petitioner will not serve any useful purpose. Without commenting anything on the merits of the case, the present petition is allowed. Petitioner is ordered to be released on regular bail on furnishing adequate bail bonds and surety bonds to the satisfaction of concerned learned trial Court.

It is clarified that any observation made hereinabove shall not be construed as an expression on the merits of the case.

(SUVIR SEHGAL)
JUDGE

27.07.2020

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Whether speaking/ reasoned : Yes/ No

Whether Reportable : Yes/ No