

S.No.205

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

Date of Decision:28.07.2020

1. CRM-M-17388 of 2020 (O&M)

**Ajaib Singh Petitioner
Vs.
State of Punjab Respondent**

2. CRM-M-17646 of 2020 (O&M)

**Ajaib Singh Petitioner
Vs.
State of Punjab Respondent**

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IN VIRTUAL COURT

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CORAM:- HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present:- Mr. K.S. Dadwal, Advocate for the petitioner.

Mr. H.S. Multani, AAG, Punjab.

Mr. P.P.S. Tung, Advocate for the complainant.

Rajbir Sehrawat, J.(Oral)

This order shall dispose of two petitions i.e. CRM-M-17388 of 2020 and CRM-M-17646 of 2020, in which the petitioner is seeking bail pending trial in case FIR No.117 dated 26.07.2018 registered under Sections 363, 366-A, 376, 120-B IPC and Section 6 of Prevention of Children from Sexual Offences Act, 2012 at Police Station Sadar, District Hoshiarpur and in case FIR No.177 dated 15.12.2018 registered under Sections 376, 365, 506, 458, 120-B, 148, 149 IPC and Section 4 of Protection of Children from Sexual Offences Act, 2012 at Police Station Sadar, District Hoshiarpur.

It is contended by counsel for the petitioner that the case

against the petitioner is totally concocted. The petitioner had never enticed away or forced the daughter of the complainant to accompany him or to marry him. It is the daughter of the complainant, who had herself accompanied the petitioner and even solemnised the marriage with him out of her free will. Counsel has referred to the statement made by the prosecutrix before the Court under Section 164 Cr.P.C, wherein she has stated that everything had happened as per her choice and consent. She had left the house because her father used to beat her unnecessarily. The counsel has further referred to the statement made by the prosecutrix, while appearing as a witness in the trial, wherein she has again admitted that she has solemnised the marriage with the petitioner with her free will and that the said marriage has not been annulled or repudiated by her so far. Counsel has further submitted that although earlier she might be minor as per the case of the prosecution, however, at the time of making the statement before the Court during the trial, she had already attained the age of majority. Despite that she had endorsed the marriage and has ruled out any annulling or repudiation of marriage. Counsel has also referred to the statement of the prosecutrix made before the trial Court; wherein she has admitted that she had even approached the Police and had got lodged a DDR against her father for beating her. Hence, it is not the act of the petitioner which forced the prosecutrix to leave the house, rather it is the conduct of her father, because of which she had left her house. Counsel has also pointed out that the prosecutrix had run away with the petitioner; not once; but twice; and she had stayed with him and with some of his relatives for about five

months in total. Therefore, for such a duration, the petitioner could not have kept her by force, particularly, when the petitioner had admittedly left her alone at his Aunt's house. Accordingly, it is submitted that any forcible act on the part of the petitioner is totally ruled out. The petitioner does not even deny the marriage with the prosecutrix. Similarly, even the prosecutrix has not denied the marriage; nor has she repudiated the same even after attaining the age of majority. Rather, before the Court she has endorsed the same after attaining the age of majority. The prosecution has examined only ten witnesses out of 37 witnesses. Hence, the trial is likely to take quite a long time. Although the petitioner was earlier released on bail in one of these cases on 26.09.2018, however, he was arrested again on 09.04.2019, because he could not appear before the trial Court in the interregnum. However, after the re-arrest, the petitioner is in continuous custody since 09.04.2019. He is not required for any investigation purposes. Hence, petitioner deserves to be released on bail.

On the other hand, learned State Counsel being instructed by ASI Sukhram Singh and being assisted by learned counsel for the complainant, has submitted that the girl, who was enticed away by the petitioner was minor at that time. Therefore, even her consent is immaterial, so far as the offence of rape is concerned. However, he has not disputed the fact that the prosecutrix, while appearing as a witness before the trial Court has not denied or repudiated the marriage. It is also not disputed that the prosecutrix has not only not denied the marriage with the petitioner, rather, in her cross-examination she has referred the petitioner as her husband. It is

also not denied that after his re-arrest, the petitioner has been in custody since 09.04.2019 and that only 10 witnesses have been examined so far, out of total 37 witnesses.

In view of the above, but without commenting upon merits of the case, the present petitions are allowed. It is ordered that the petitioner be released on bail on his furnishing bail bonds/ sureties to the satisfaction of the trial Court/ Duty Magistrate.

July 28, 2020
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(RAJBIR SEHRAWAT)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No