

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

CRM-M-21891-2020 (O&M)

Date of decision: 09.09.2020

Dimple Kumar Sharma

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. B.R. Rana-I, Advocate for the petitioner.

Mr. J.S. Ghuman, DAG, Punjab.

Ms. Ritu Punj, Advocate with
Mr. Karan Kaushal, Advocate for the complainant.

H.S. MADAAN, J. (Oral)

Case taken up through video conferencing.

This petition for pre-arrest bail has been filed by petitioner Dimple Kumar Sharma, an accused in FIR No.123 dated 09.06.2020, for offences under Sections 363 and 366-A of IPC, registered with Police Station Shimlapuri, District Ludhiana.

Briefly stated facts of the case as per prosecution version are that, complainant Raj Kumar son of Sh. Nanak Chand, resident of Ravindra Colony, Shimlapuri, Ludhiana, aged about 42 years had got his statement recorded with the police wherein he stated that his daughter Kashish, aged about 17 years was missing from home since 08.06.2020 evening and despite best efforts made, she could not be located. The

complainant had a firm belief that Dimple Kumar Sharma (present petitioner) had enticed away his minor daughter with an intention to marry her. He sought taking of action against Dimple Kumar Sharma. On the basis of such statement of complainant, formal FIR was recorded. The investigation in the case started.

Apprehending his arrest in this case, petitioner had approached the Court of Sessions at Ludhiana, seeking pre-arrest bail. His such application was assigned to Addl. Sessions Judge, Ludhiana, who vide order dated 09.07.2020 had dismissed the application. Still feeling aggrieved, he has knocked at the door of this Court, praying for grant of similar relief, which request is being opposed by the State counsel and counsel for the complainant.

I have heard learned counsel for the parties besides going through the record.

Counsel for the petitioner states that the petitioner has not committed any offence of kidnapping as alleged by the prosecution, rather, he was involved in a love affair with Kashish, daughter of the complainant and both of them wanted to get married but family members of Kashish were not agreeable, therefore, Kashish decided to leave her parental house and got married with the petitioner on 10.06.2020. Both of them sought protection from this Court also. Kashish is aged more than 17 years and has attained the age of discretion. She is not willing to return to her parental house. Further, the petitioner has joined the investigation as directed by this Court while granting him interim bail and no recovery is to be effected from him. Therefore, the anticipatory

bail be granted to the petitioner.

The petition is vehemently opposed by the State counsel, submitting that the girl in question being a minor, the petitioner had enticed her away, giving her allurements of marriage, she could not give valid consent to marriage being a minor and the marriage said to have been solemnized between the petitioner and Kashish on 10.06.2020 is not a valid marriage. He has further contended that the petitioner has though joined the investigation but he was asked to cause appearance of minor girl Kashish before the police in connection with the investigation of the case but he failed to do so. Therefore, he is not entitled to grant of pre arrest bail.

After hearing the rival contentions, I find that no case is made out for grant of anticipatory bail to the petitioner. It is not much disputed by the petitioner even that the girl in question is below 18 years of age, as such a minor. Consent of minor does not have much significance. The marriage said to have been performed between the petitioner and Kashish, a minor is in violation of Section 5 of the Hindu Marriage Act, as such, it is not a valid marriage. The petitioner could not have taken Kashish, a minor girl aged below 18 years from the guardianship of her parents without their consent. He having done so, offence of kidnapping is shown to have been committed by him.

As regards the petition for protection filed by him along with Kashish Kumari before this Court and the order passed therein on 16.06.2020, copy being Annexure P2, only a direction has been issued to the police to ensure that lives and liberty of the petitioners are not put to

any harm or threat at the hands of family members of Kashish but in that order itself, it is mentioned that there is no firm proof of age of petitioner No.1 other than her affidavit, for that reason, concerned Commissioner of Police, Ludhiana and Station House Officer, Police Station Shimlapuri, District Ludhiana shall get the matter enquired into from the school where petitioner No.1 Kashish studied in, after taking the name of that school from her parents and if she is found to be below the age of 18 years, proceedings under provisions of Prohibition of Child Marriage Act, 2006 shall be initiated immediately as per law. In that way, there is nothing in the order prohibiting taking of any criminal action against the present petitioner or legalizing the marriage between the petitioner and Kashish. The custodial interrogation of the petitioner is necessary for complete and effective investigation. If the same is denied to the investigating agency that shall adversely affecting the investigation, which is uncalled for. As has been submitted by the State counsel, though, the petitioner has joined the investigation but he has not caused appearance of Kashish before the police. Therefore, the recovery of Kashish from custody of the petitioner is yet to be effected and her statement is also to be got recorded as to under what circumstances and at whose instance, she left her parental home and role played by the petitioner in the incident. Thus, finding no merit in the instant petition, the same stands dismissed.

09.09.2020

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(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No