

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

CRM-M-31744-2020 (O&M)
Date of Decision:- 15.10.2020

Mukesh Chauhan @ Mukki Singh ... Petitioner

Versus

State of Haryana ... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Balraj Gujjar, Advocate, for the petitioner.

Mr. Bhupender Singh, DAG, Haryana,
assisted by ASI Krishan.

(Proceedings conducted through video conferencing)

GURVINDER SINGH GILL, J. (Oral)

1. The petitioner has filed this petition seeking grant of regular bail in a case registered against him vide FIR No.201, dated 6.11.2008, Police Station Pataudi, District Gurugram, under Sections 363, 366-A, 376(2), 120-B IPC.
2. The FIR in question was registered at the instance of Naresh Kumar, wherein he alleged that on 2.11.2008 when he was filling water tank on his plot, then his wife came there at about 2/2.30 pm and informed him that their daughter (victim) was missing from the home. Although the complainant and others searched for his daughter but she could not be traced. The complainant stated therein that they do not have any suspicion against anybody. However, it was stated

therein that complainant's daughter was having mobile No. 9992150554 belonging to his son and that from the said mobile phone, a call had been made to telephone No. 9728041197. It is further the case of prosecution that the victim returned back to Gurugram in the year 2010 and that it was in the year 2013 that statement of the victim was recorded in terms of Section 164 Cr.P.C. which reads as follows:

“Stated that I studied up to 8th class. I was studying in Navjyoti High School. In my house, I have mother, father and two brothers. I have got married. I got married with Jatin son of Manohar Lal, on 05.05.2010. I have two children whose names are Sidharth and Rohit. It was on 02.11.2008. There was a boy namely Mukesh. I eloped along with him. Name of the father of Mukesh was Mamraj. Mukesh belongs to our village. Both of us were in affair. He promised me to marry so that I eloped along with him. On 02.11.2008 at about 2:30 P.M. friend of Mukesh namely Vikram son of Mahender came. I left the house. He met me in the way. He dropped me in Hailey Mandi, Railway Station. At railway station Mukesh was waiting for me. Then we boarded the train and went to Delhi and there we lived in the house of his friend, whose name I do not know. We lived there for 1 ½ to 2 months. Then we went to Mumbai. We went Mumbai by train. In between he did forcible act with me and also in Mumbai he did forcible act with me. He used to beat and threat me. He did sex with me without my consent. We lived at Mumbai for 1 ½ years. I used to say him to perform the marriage but he did not agree. I asked him to go to home but he did not bring me.

When I forced him then he took me to Delhi. I lived in Delhi for two months with him. I don't remember the date. Thereafter I came at Gurgaon by escaping and started to do a job at a Saree shop and also used to reside and sleep there. There I met to Jatin who was working as carpenter. Then I married with him. I am happy in my married life. I want strict action against Mukesh. He exploited me. He has taken benefit of my being minor. Affidavit given in the High Court was also not with my consent. Brother of Mukesh came at my house. My husband was not in the house. By threatening to me they got my sign on affidavit. That affidavit is not acceptable. I am giving this statement by my own free will. I have no coercion upon this. I do not want to say anymore. I want to go to home and as per wishes of my father I want to live with my husband.”

3. Learned counsel for the petitioner has submitted that he has falsely been implicated in the present case and that even as per the statement of the prosecutrix recorded under Section 164 Cr.P.C., the victim as well as the petitioner were having an affair and were on good terms and that the victim had eloped with the petitioner on her own accord. It has further been submitted that in fact the victim was aged much more than 17 years at the time of recording of her statement recording under Section 164 Cr.P.C. as she herself had stated that she is having two children.
4. Learned counsel has further submitted that the falsity of the allegations would be evident from the fact that co-accused namely Vikram who was tried by the Court had since been acquitted and that

the complainant, when examined by the trial Court absolutely resiled from his statement. Learned counsel in this regard has referred to the statement of PW-1 Naresh Kumar (Annexure P-3) recorded during the course of trial of Vikram which reads as follows:

“I am having three children namely Bholu @ Pardeep, Kalu @ Pawan and Anjali. On 2.11.2008, at about 10:00 AM I had left my home for going to plot. I had asked my family members to come in the plot. In plot I my wife Bholu @ Pardeep and Kalu @ Pawan had put crusher inside the plot. At about 2:30 PM I asked my wife to bring meals. Immediately, my wife returned back and told me that Anjali was not at home. I asked my wife to look for Anjali in houses of her friends. But of no use. At about 7:30 PM, I went to the police station. I submitted intimation. While we were searching of Anjali, my son Bholu received mobile call on his mobile from mobile of accused Vikram stating that Anjali had reached Pune, so, we should not searched for her. I had given intimation of this fact to police on 3.11.2008. I and my family members to give the details of whereabouts of my daughter Anjali but of no use. In the evening I submitted application to police involving accused Vikram in the case. I do not know any other facts regarding the case.”

5. Opposing the petition, learned State counsel has submitted that since it is a case where the victim was a minor when she was enticed away by the petitioner, no case for grant of bail is made out. Learned counsel has further submitted that conduct of the petitioner who had

earlier remained a 'Proclaimed Offender' would also dis-entitle the petitioner to the concession of bail.

6. I have considered rival submissions addressed before this Court. Apparently it is a case where the victim had eloped with the petitioner out of her own free will and accord, though, it does appear that she was a minor when she had left her house with the petitioner. However, at the same time this Court also finds that the complainant when examined in the Court during the course of trial of co-accused Vikram absolutely resiled from his statement and did not state a word against the petitioner and that the co-accused Vikram has since been acquitted.
7. Though, it is correct that the petitioner had been declared a 'Proclaimed Offender', but subsequently he surrendered before the trial Court on 4.12.2019 and now he is in custody since the last more than 10 months. The trial in its normal course is likely to take considerable time for its conclusion. In these circumstances, further detention of the petitioner will not serve any useful purpose. The petition, as such, is accepted and the petitioner is ordered to 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 15, 2020

mohan

**(GURVINDER SINGH GILL)
JUDGE**

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No