

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

I) CRM-M-8374-2021 (O&M)

Waseem ... Petitioner

Versus

State of Haryana ... Respondent

II) CRM-M-8402-2021 (O&M)

Juber @ Gohera ... Petitioner

Versus

State of Haryana ... Respondent

Date of Decision:-26.2.2021

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Farukh Abdullah, Advocate,
for the petitioner in CRM-M-8374-2021.

Mr. Munfaid Khan, Advocate,
for the petitioner in CRM-M-8402-2021.

Mr. Ramesh Kumar Ambavta, AAG, Haryana,
assisted by ASI Subhash.

GURVINDER SINGH GILL, J.(Oral)

1. This order shall dispose of the above mentioned two petitions filed on behalf of petitioners Waseem and Juber @ Gohera seeking grant of regular bail in respect of a case registered vide FIR No.42 dated 5.3.2020 at Police Station Uttawar, District Palwal under Sections 363, 366-A, 120-B of Indian Penal Code and Section 4 of Protection of Children from Sexual Offence Act, 2012.
2. The FIR in question was lodged at the instance of Shamshed, wherein it is alleged that on 4.3.2020 his daughter i.e. the victim aged 15-16 years went out of the house but did not return back. Although the complainant tried to look for her but she could not be found. The complainant alleged that upon inquiries he came to the conclusion that Juber @ Gohra, Sahil, Afshar, Wasim and Anish @ Bahro had kidnapped his daughter while alluring her and had kept her concealed at some unknown place.
3. Learned counsel for the petitioners have submitted that the victim as well as the petitioner Juber @ Gohera are Muslim by religion and had solemnized marriage, which was not acceptable to victim's father and on account of which the victim as well as the petitioner Juber @ Gohera were constrained to file a petition before this Court seeking protection i.e. CRWP-2718 of 2020, wherein order dated 13.3.2020 (Annexure P-4 in CRM-M-8402 of 2021) was passed while issuing directions to the authorities concerned to decide their representation. Learned counsel for the petitioners have further submitted that when the statement of victim was recorded on 13.6.2020 in terms of Section 164 Cr.P.C. she did not state a word against any of the

petitioners and that subsequently she has been pressurized by her family and had made a statement contrary to the earlier statement (Annexure P-5 in CRM-M-8402 of 2021).

4. Opposing the petition, learned State counsel has submitted that since it is a case where the victim was a minor, offences under POCSO Act would be attracted even if the victim or the accused happens to be Muslim. It has further been submitted that since the petitioners are specifically named in the FIR, no case for grant of bail is made out. Learned State counsel has, however, informed that while petitioner Juber @ Gohera has been behind bars since the last about 6 months, petitioner Waseem has been behind bars since the last about 7 months. Learned State counsel has informed that while the petitioner Waseem stands involved in 4 other cases, petitioner Juber @ Gohera is not involved in any other case.
5. I have considered rival submissions addressed before this Court.
6. The case *prima facie* appears to be a case of run-away marriage as the victim as well as petitioner Juber @ Gohera had approached this Court seeking protection. It is not in dispute that both, the victim as well as petitioner Juber @ Gohera, are Muslim by religion and on account of which their marriage may not be called to question despite the victim being aged 15-16 years. In any case, when the victim was initially examined in terms of Section 164 Cr.P.C. on 13.6.2020, she stated to be following effect:

“In the month of March 2020, I along with Juber went with my consent. On 11th March, I performed marriage with Juber in a Masjid situated in Chandigarh and now Juber is my husband. Since then, I am residing with Juber as his wife. I went away from my house with my own consent and Juber did not kidnap me. The physical

relation as husband and wife were developed between me and Juber.”

7. Having regard to the aforestated position, it is *prima facie* evident that the victim had left her house on her own accord and had solemnized marriage. Though the learned State counsel has informed that subsequently another statement of the victim was recorded in terms of Section 164 Cr.P.C., wherein she has levelled allegations of rape against the petitioner Juber @ Gohera, but the veracity of such contradictory statements would be rendered debatable. In any case, since the petitioners have been behind bars for a substantial period and conclusion of trial is likely to consume time, further detention of the petitioners will not serve any useful purpose. Both the petitions, as such, are accepted. The petitioners are ordered to be released on regular bail on their furnishing bail bonds/surety bonds to the satisfaction of learned Trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.

26.2.2021

pankaj

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned Yes / No

Whether Reportable Yes / No