

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

(Through Video Conferencing)

CRM-M-44002-2020 (O&M)

Date of Decision: 19.08.2021

MOSIM

.....Petitioner

V/s.

STATE OF HARYANA

.....Respondent

CORAM: **HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL.**

Present: Mr. Surinder Dhull, Advocate,
 for the petitioner.

 Ms. Tanushree Gupta, DAG, Haryana.

MANJARI NEHRU KAUL, J. (Oral)

This is the first petition filed under Section 439 of the Code of Criminal Procedure for grant of concession of regular bail to the petitioner in case FIR No.40 dated 16.07.2020 lodged under Section 365, 363, 366-A, 376, 120-B and 212 of the Indian Penal Code, 1860 and Section 6 of the POCSO Act registered at Police Station Women, Palwal, District Palwal, Haryana.

Learned counsel for the petitioner submits that on the face of it, a false and fabricated case has been foisted upon the petitioner by the mother of the victim. He submits that on 09.06.2019, the complainant got one FIR registered against the petitioner under Section 363 and 366-A of the IPC. However, a cancellation report was filed as the victim made a statement under Section 164 of the Cr.P.C. that she had accompanied the petitioner of her own accord. Thereafter, another FIR was registered on 25.06.2020 by the same complainant levelling same allegations as before including allegations

of rape against the petitioner. Thereafter, on 16.07.2020, the FIR in hand was registered against the petitioner qua the same occurrence which had allegedly taken place before.

It has been submitted that in fact, the victim was not a minor as has been alleged by the complainant but she was a major as her date of birth i.e. 01.01.2003 stood reflected in her Adhaar card as well. Learned counsel for the petitioner submits that it was a case of consensual relationship and as the victim was a major, she and the petitioner solemnized marriage after which they approached this Court by way of a criminal petition seeking protection of their life and liberty.

Per contra, learned State counsel has vehemently opposed the prayer and submissions made by the learned counsel for the petitioner. She on instructions from SI Rupinder Singh has apprised the Court that subsequent to the registration of the second FIR against the petitioner on 25.06.2020, the petitioner had kidnapped the victim and it was thereafter, the instant FIR came to be registered against him on 16.07.2020.

Learned State counsel submits that the submission made by the learned counsel for the petitioners to the effect that the victim was a major on the date of alleged occurrence is factually incorrect. In support of thereof, she submits that as per her school certificate, which obviously had been made on the basis of her birth certificate, her date of birth was 20.12.2005., Hence, she submitted that the victim is a minor even as on date.

Learned State counsel has further submitted that since there are allegations against the petitioner of having enticed away a minor girl on the pretext of marriage even if the victim had not stated anything against the

petitioner, it would not be of any benefit to him as the consent of a minor is of no consequence.

She has still further submitted that the prosecution evidence is yet to commence and if the petitioner is enlarged on bail there is every likelihood of the material witnesses being influenced or evidence being tampered with.

In view of the above, no ground is made out to extend the concession of regular bail to the petitioner and thus, the instant petition stands dismissed. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

August 19, 2021

Ess Kay

**[MANJARI NEHRU KAUL]
JUDGE**

<i>Whether speaking / reasoned</i>	:	<i>Yes</i>	/	<i>No</i>
<i>Whether Reportable</i>	:	<i>Yes</i>	/	<i>No</i>