

CRM-M-3399-2023 (O&M) &
CRM-M-2085-2023 (O&M)

-1-

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

216 (2 cases)

CRM-M-3399-2023 (O&M)
Date of Decision: 25.04.2023

Abhisek Alias Abhi

...Petitioner

Versus

State of Punjab

...Respondent

And

CRM-M-2085-2023 (O&M)

Raj Kumar

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Sunil Agnihotri, Advocate for the petitioner
(in CRM-M-3399-2023)

Mr. Vishal Thakur, Advocate for the petitioner
(in CRM-M-2085-2023)

Mr. Vipin Pal Yadav, Addl. AG, Punjab
(assisted by ASI Ram Singh)

Mr. Gurdeep Singh Nehra, Advocate for
Mr. Sudhir Rana, Advocate for the complainant

JAGMOHAN BANSAL, J. (ORAL)

CRM-17874-2023 in CRM-M-3399-2023

Application for amendment/correction in head note, prayer clause as well as in paragraph No.1 of petition for addition of Section 384 of IPC in FIR No.0132 dated 14.08.2022 registered at Police Station Mukerian, District Hoshiarpur, is allowed. Registry is directed to carry out necessary amendments.

CRM-M-3399-2023 (O&M) &
CRM-M-2085-2023 (O&M)

-2-

CRM stands disposed of.

CRM-M-3399-2023 & CRM-M-2085-2023

1. Through this common order, CRM-M-3399-2023 and CRM-M-2085-2023 are disposed of as both are interconnected and are arising out of same FIR.

2. The petitioners through instant petition under Section 439 Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') are seeking concession of regular bail in FIR No.0132 dated 14.08.2022 under Sections 363 & 366-A of Indian Penal Code, 1860 (for short 'IPC') (Sections 120-B & 384 of IPC added later on) registered at Police Station Mukerian, District Hoshiarpur.

3. The case of prosecution is that complainant Prem Kumar lodged a complaint alleging that on 13.08.2022, his daughter who is 16 years and 4 months old, had left for her school in the morning, however, has not come back. She has been kidnapped and seduced on the pretext of marriage. She had taken away Rs.1 Lac cash and gold jewellery weighing 7-8 tolas. The prosecutrix was recovered on 14.08.2022 and she disclosed that she was enticed by Mohit Kumar @ Kalu along with Raj Kumar and Abhishek @ Abhi. Raj Kumar and Abhishek were nominated in the FIR and Section 120-B IPC was added.

4. Learned counsel for the petitioners *inter alia* contends that there is no allegation of commission of offence punishable under Section 363 and 366-A of IPC against the petitioners and they have been implicated

invoking provisions of Section 120-B & 384 of IPC. On account of affair, the prosecutrix had eloped with the main accused. The petitioners are in custody since 16.08.2022 and they are not involved in any other offence.

5. Learned counsel for the complainant submits that complainant has no objection, if Raj Kumar is released on bail because complainant has compromised the matter with him.

6. Learned State Counsel, on instructions from ASI Ram Singh, does not dispute the fact that petitioners are not guilty of commission of offences punishable under Sections 363 & 366-A and they have been nominated under Section 120-B of IPC. He further submits that police report has already been filed and charges are yet to be framed. There are total 21 witnesses. The petitioner is involved in the commission of grave offence, thus, no leniency is warranted and release of petitioner would hamper the trial.

7. In the case in hand, the petitioners are nominated in the challan as accomplice of the main accused who allegedly has committed offence punishable under Sections 363 and 366-A IPC. The petitioners have been implicated invoking rigour of Section 120-B of IPC. The complainant has no grievance against Raj Kumar (petitioner in CRM-M-2085-2023). The petitioners are in custody since 16.08.2022 and they are not involved in any other crime. The challan has already been presented and no recovery is to be effected from them. The Trial Court yet has to return definite findings on the disputed issues. There are 21 prosecution witnesses, thus, there is

CRM-M-3399-2023 (O&M) &
CRM-M-2085-2023 (O&M)

-4-

abysmally low possibility of conclusion of trial in near future. As prosecution has right to arrest, investigate the matter and restrain an accused from manipulating or winning over witnesses, similarly accused in view of Article 21 of the Constitution of India has right to defend himself and put forth his stand which cannot be possible while in custody. The prosecution has not led any convincing/plausible documentary or oral evidence indicating possibility of petitioner being flee from justice or tampering the evidences or winning over/threatening the witnesses.

8. In view of afore-stated facts and circumstances, this Court is of the considered opinion that present petitions deserve to be allowed and accordingly allowed. The petitioners are ordered to be released on bail subject to conditions as may be imposed by Trial Court/Illaqa/Duty Magistrate concerned.

9. Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and Trial Court shall proceed without being prejudiced by observations of this Court.

(JAGMOHAN BANSAL)
JUDGE

25.04.2023
Mohit Kumar

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>