

CRM-M-7268-2023
Date of decision: 18.08.2023

...PETITIONER

...RESPONDENT

CRM-M-7355-2023

...PETITIONER

...RESPONDENT

CRM-M-7364-2023

...PETITIONER

...RESPONDENT

3. Briefly, the FIR has been registered on the basis of the statement of the father of the victim alleging that a case bearing FIR No.332 dated 06.12.2020, under Sections 363/366/376D/373/120 of IPC and Section 6 of POCSO Act was

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registered at Police Station Dinanagar against the petitioners and others. It has been further alleged that a complaint case is also pending against the petitioners in the Court of learned Judicial Magistrate, Gurdaspur. The petitioners in connivance with each other have kidnapped the victim on 31.10.2022 at 09:00 PM to save themselves from the criminal proceedings. Efforts were made to locate the victim but to no effect.

4. Learned counsel for the petitioners contend there is a delay of 13 days in lodging the FIR. In the case bearing FIR No.332 dated 06.12.2020, the statement of the victim was recorded under Section 164 Cr.P.C. wherein she had not imputed any allegation against the petitioners. Furthermore, during the course of trial, she had made the statement imputing the allegations against the petitioners and on the basis thereof an application under Section 319 Cr.P.C was moved but the same has been dismissed vide order dated 01.10.2022. The present FIR has been registered subsequent to the dismissal of the application under Section 319 Cr.P.C. It has been further submitted that at the earlier instance, an enquiry was conducted by the Deputy Superintendent of Police and the allegations were found to be not substantiated. However, the Senior Superintendent of Police had disagreed with the enquiry as the victim was minor and consequently, FIR has been registered.

5. Learned State counsel and counsel for the complainant have opposed the application on the score that the victim was aged about 17 years and her date of birth is 05.03.2005. Although, the application under Section 319 Cr.P.C has been dismissed but there were specific and categoric allegations levelled by the victim in the statement to the effect that she was forced to indulge in flesh trade at the instance of the petitioners. Moreover, a criminal complaint is also pending

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against the petitioners at the instance of the father of the victim. Even, the victim has not been traced out till date.

6. It is significant to note that there are multiple cases between the parties. The FIR has been lodged on the allegations that the victim has been kidnapped by the petitioners on account of criminal cases registered against them. Furthermore, the victim who is stated to be less than 18 years has not yet been recovered. Merely, because during the course of enquiry conducted by the Deputy Superintendent of Police, the allegations were found to be not substantiated, it cannot be construed that the version putforth by the complainant is false. It is significant to note that the Senior Superintendent of Police has not concurred with the enquiry and directed the registration of the FIR. The delay in lodging the FIR cannot be termed to be circumstantial to conclude false implication at this stage. The effect of delay in lodging the FIR, if any, is seen to be the trial Court at the appropriate stage of trial. The victim has not been recovered and in such circumstances, the matter requires thorough probe and investigation and custodial interrogation of the petitioner appears to be essential for proper investigation of the case. As such, no exceptional circumstances are made out to extend the concession of pre-arrest bail to the petitioner.

7. In view of the above, the present petitions are dismissed.

18.08.2023
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(VIVEK PURI)
JUDGE

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No