

212-A

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-15301-2023 (O&M)

Date of Decision : 05.07.2023

Muskan Nahar and another

....Petitioners

VERSUS

State of Punjab

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Rishu Mahajan, Advocate for the petitioners.

Mr. Jaiteshwar S. Bhandari, AAG Punjab.

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ALKA SARIN, J. (Oral)

1. The present petition has been filed under Section 438 of the Code of Criminal Procedure, 1973 for grant of anticipatory bail to the petitioners in FIR No.238 dated 30.07.2022 registered under Sections 363/366-A of the Indian Penal Code, 1860 and Sections 376/344/120-B IPC, Sections 9, 10, 11 of Prohibition of Child Marriage Act, 2006 and Section 6 of Protection of Children from Sexual Offences Act, 2012 added later on at Police Station Civil Lines, Amritsar.

2. On 27.03.2023 the following order was passed :

“1. This is a petition under Section 438 Cr.P.C seeking grant of pre-arrest bail in case FIR No.238 dated 30.07.2022 under Sections 363/366-A IPC (Sections 376/344/120-B IPC and Section 9, 10, 11 of Prohibition of Child Marriage Act, 2006 and Section 6 of Protection

of Children from Sexual Offenses Act, 2012 added later on) registered at Police Station Civil Lines, Amritsar.

2. The FIR in question was lodged on the statement of victim's father alleging that on 25.07.2022, his daughter, aged about 17 years, was enticed away by the main accused Ajay Singh @ Laatoos on the pretext of getting married. He used to harass her earlier also.

3. Both the petitioners have not been named in the FIR, the allegations against them came up for the first time in the statement of complainant's daughter/victim recorded under Section 164 Cr.P.C., dated 06.10.2022, alleging that she went to birthday party of petitioner No.1, where petitioner No.2 was also present. The two teased and harassed her, and told her to speak to the main accused Ajay Singh or else petitioner No.1 would jump out of the window. The petitioners gave her a cold drink. On having it, she became unconscious. She regained consciousness after two days in the house of Ajay Singh's maternal uncle in village Chhidni, where Ajay, his mother and maternal aunt were also present. The allegations are that she was kept confined in that house illegally, where Ajay Singh made physical relations with her four times without her consent.

4. *Learned counsel for the petitioners further contends that it is a case of false implication as there was no birthday party as alleged on 25.07.2022. The date of birth of petitioner No.1 is 20.01.2003, as apparent from her Aadhar Card which is on record. It is further alleged that victim herself has married Ajay Singh on 27.07.2022, who is accused of the sexual assault. The allegations, as such, do not constitute the offences alleged against the petitioners. Besides, Ajay Singh's mother has been admitted to regular bail and his uncle and maternal aunt have been granted pre-arrest bail by this Court, who are similarly placed as the petitioners.*

5. *Ms. Jashandeep Singh, Assistant Advocate General, Punjab appears on advance notice on behalf of the respondent-State. He, upon instructions from ASI Narinder Kumar, opposes the grant of pre-arrest bail on the ground that the victim was a minor at that time. He, however, does not dispute the factum of marriage between the victim and main accused Ajay Singh, as also the fact that she has given an affidavit claiming herself to be major, her date of birth being 28.08.2023.*

6. *Notice of motion for 05.07.2023.*

7. *To be heard along with CRM-M-14293-2023.*

8. *In the meantime, the petitioners are directed to join investigation as and when called upon to do so by the Investigating Officer, and in the event of arrest, they shall be released on interim bail to the satisfaction of Arresting Officer. The petitioners shall also abide by the conditions of Section 438(2) Cr.P.C.”*

3. Learned counsel for the petitioners would contend that the petitioners have since joined the investigation and fully cooperated.

4. Learned counsel for the State, on instructions from ASI Nishant Singh, states that the petitioners have since joined investigation and are fully co-operating and that they are no longer required for further custodial interrogation as of now.

5. In view of the above, the order dated 27.03.2023 is made absolute. The petitioners shall, however, join investigation as and when called for. The petitioners shall also abide by all the terms and conditions as specified under Section 438(2) of the Code of Criminal Procedure, 1973.

6. Disposed off accordingly. Pending applications, if any, also stand disposed off.

05.07.2023
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(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO