

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

Date of Decision: 20.11.2023

CRM-M-31227-2023

1.

SHER ALI ALIAS SHERU
V/S

... PETITIONER

STATE OF PUNJAB

... RESPONDENT

2.

CRM-M-41090-2023 (O&M)

REHMAT @ REHMAT ALI @ REHMUN
V/S

... PETITIONER

STATE OF PUNJAB

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present: Ms. G.K.Mann, Senior Advocate with
Mr. Anmol Jeevan Singh Gill, Advocate for the petitioners.
Mr. Hittan Nehra, Addl. A.G. Punjab.

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VIVEK PURI, J. (ORAL)

1. The petitioners are seeking regular bail in case bearing FIR No. 08 dated 21.01.2017 under Sections 363, 366, 120-B, 376-D IPC & Section 4 of Protection of Children from Sexual Offences Act, registered at Police Station Chohla Sahib, District Tarn Taran.

2. Learned Senior counsel for the petitioners contend that as per the allegations, the petitioners had kidnapped the prosecutrix on 19.01.2017. Rehmat @ Rehmat Ali, petitioner is the father-in-law and Sher Ali @ Sheru, petitioner is the maternal uncle of the husband of the prosecutrix. The age of the prosecutrix has been wrongly mentioned as 17 years in the FIR. In fact, the prosecutrix is more than 30 years of age. She has solemnized marriage with Sham Ali, the son of Rehmat @ Rehmat Ali and having 5 children from the wedlock. Even while appearing in the witness-box, the prosecutrix has stated her age to be 31 years and has not supported the prosecution version. The complainant, who is brother of the prosecutrix has also not supported the prosecution version. The challan was presented against the petitioners along

with one Kaudin who has since died. Rehmat @ Rehmat Ali-petitioner is in custody for a period of 6 months and 7 days and Sher Ali @ Sheru, petitioner is in custody for a period of 7 months and 4 days. Though, Sher Ali, petitioner is involved in another case under Section 376 IPC but the same pertains to the year 2013 and is on bail in that case. As per the oscification test, the age of the prosecutrix has been specified to be 30 to 40 years.

3. Learned State counsel submits that in her statement under Section 164 Cr.P.C. the prosecutrix has specifically and categorically attributed allegations against the petitioners and has specified her age to be 17 years.

4. It may be mentioned here that on the previous date of hearing, learned State counsel had sought adjournment to verify as to whether any sample has been sent for DNA analysis or not.

5. It has been submitted that ASI Avtar Singh has come to assist him in the matter but he is having incomplete instructions in this regard. It has been further submitted that there is no document with regard to the age of the victim.

6. It is significant to note that the prosecutrix has allegedly solemnized marriage with the son of Rehmat @ Rehmat Ali and 5 children have been born from the wedlock. The prosecutrix has not supported the prosecution version during the course of trial.

7. Learned State counsel is not having instructions with regard to sending of sample for DNA analysis. The age of the prosecutrix to be less than 18 years, is also doubtful, particularly as no document depicting the date of birth of the prosecutrix has been pointed out and her age, as per the

oscification test, has been opined to be 30 to 40 years. Even the complainant, who is brother of the prosecutrix has not supported the prosecution version. Out of 24, only 3 witnesses have been stated to be examined till date.

8. Rehmat @ Rehmat Ali-petitioner is stated to be in custody for a period of 6 months and 7 days and Sher Ali @ Sheru, petitioner is in custody for a period of 7 months and 4 days. The conclusion of trial is likely to take some time and no fruitful purpose would be served by detaining the petitioners in further custody.

9. As such, sufficient mitigating circumstances are made out to extend the concession of bail to the petitioners. Therefore, without making any expression of opinion on the merits of the case, it is ordered that the petitioners be released on regular bail subject to their furnishing fresh bail bonds/surety bonds to the satisfaction of the concerned trial Court/Chief Judicial Magistrate/Duty Magistrate.

10. The petitions are allowed.

20.11.2023

Janki

(VIVEK PURI)
JUDGE

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