

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

**CRM-M No.49205 of 2023 (O&M)
DATE OF DECISION : 09.11.2023**

KapilPetitioner

versus

State of HaryanaRespondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Parminder Singh, Advocate for the petitioner

Ms. Mahima Yashpal, DAG Haryana

Mr. Rajesh Duhan, Advocate for the complainant

ALKA SARIN, J. (Oral):

1. This is a petition under Section 438 of the Code of Criminal Procedure, 1973 for grant of anticipatory bail to the petitioner in FIR No.895 dated 29.11.2022 under Sections 363, 366-A, 506 of the Indian Penal Code, 1860 (IPC) and later on added Section 376(3) IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) registered at Police Station Indri, District Karnal.
2. On 29.11.2022 the complainant i.e. the mother of the victim made a complaint at the Police Station to the effect that on 25.11.2022 she

had gone to Karnal and her daughter, whose age was about 15 years, was alone at home. When she came back her daughter was missing. She tried to search for her. Her phone was also switched off. Her younger son informed her that Kapil son of Satbir had taken her away on a motorcycle. When she informed Satbir about the incident, he told her that her daughter would be handed over in two days. Since the girl did not return, a complaint was given and on the basis of the complaint the present FIR was lodged. On 22.12.2022 the victim along with her mother came to the Police Station Indri, Karnal. She was counselled. However, she refused to get herself medically examined. Her statement under Section 164 CrPC was recorded wherein she stated that she had solemnized her marriage with Kapil on 26.11.2022 and she returned home the next day and that she was residing at her parental house. On 28.11.2022 they came to Panipat and took a room on rent and that nothing wrong had happened with her. On 23.12.2022 the complainant produced an affidavit for cancellation of the case. On 28.05.2023 the cancellation report was prepared. During investigation, Letter No.1965-66/Reader dated 24.06.2023 was received from the office of the Superintendent of Police, Karnal and the matter was re-investigated. During re-investigation, the complainant produced the birth certificate of the victim showing her date of birth as 17.06.2007. During re-investigation statement of the victim was recorded under Section 161 CrPC and thereafter Section 6 of POCSO Act and Section 376(3) IPC were added. During re-investigation the victim was medically examined and she was found to be approximately 28-30 weeks pregnant. The matter is still under investigation.

3. Learned counsel for the petitioner would contend that the provisions of Section 6 POCSO Act and Section 376(3) IPC would not be attracted in the present case as the victim had got married to the petitioner. Learned counsel for the petitioner has further contended whether the victim is a minor is also a debatable question as when she went for her medical her age was recorded as 19 years. Learned counsel for the petitioner would further contend that under Muslim law a girl on attaining puberty is considered eligible for marriage. It is further the contention that the petitioner has converted his religion to Muslim religion as per affidavit (Annexure P-2).

4. A status-report has been filed. A copy of the birth certificate has also been appended with the status-report. As per the certificate, the date of birth of the minor victim is 17.06.2007. The counsel for the State, on instructions from ASI-Parvesh Kumari, has also informed the Court that the victim has now delivered a child. The same also finds mention in the status-report.

5. I have heard the learned counsel.

6. In the present case there are serious allegations qua a minor child. The victim is 15 years old who is alleged to have been raped by the petitioner herein. The age proof appended with the status-report reveals that as per the school record the date of birth of the minor victim is 17.06.2007. The victim had initially refused to get her medical done. She and her mother had given an affidavit that they do not want to pursue the FIR. However, subsequently, a second statement was got recorded under Section 161 CrPC wherein she is stated to have alleged yet another incident of rape in March,

2023. The translated copy appended with the petition is not a correct translation and hence a photocopy of the statement in vernacular has also been handed over to the Court. The minor child was also found to be pregnant at the time of her medical and is now stated to have delivered a child. The argument of the learned counsel for the petitioner that this is the case of a marriage and hence the provisions of Section 376(3) and Section 6 of the POCSO Act would not be attracted cannot be accepted at this stage. The child is a minor and being a minor the said Sections *prima facie* have rightly been invoked.

7. Keeping in view the serious nature of the allegations, I do not find any merit in the present petition. The same is accordingly dismissed. Any observations made in this order shall not be treated as an expression of opinion on the merits of the case. Pending applications, if any, also stand disposed off.

09.11.2023
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(ALKA SARIN)
JUDGE

<u>NOTE:</u> Whether speaking/non-speaking: Speaking Whether reportable: YES/NO
