

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

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CRM-M No.49439 of 2023
Date of decision: 22.11.2023

Mandeep Singh

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Karanjeet Singh Brar, Advocate,
for the petitioner.

Mr. Kunwarbir Singh, AAG, Punjab,
for the respondent-State.

Mr. Sarthak Jindal, Advocate,
for the complainant.

MANISHA BATRA, J.

1. The present one is the second petition for grant of regular bail as filed by the petitioner under Section 439 of Cr.P.C. in case bearing FIR No.25 dated 21.03.2022 registered under Sections 363, 366-A and 376 of IPC read with Section 6 of Protection of Children from Sexual Offences Act, 2012 (For short "POCSO Act") at Police Station Arni Wala, District Fazilka.

2. The first bail application filed by the petitioner had been dismissed as withdrawn vide order dated 03.05.2023 passed in CRM-M No.6091 of 2023.

3. Brief facts of the case relevant for the purpose of disposal of this petition are that the aforementioned FIR was registered on

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21.03.2022 on the basis of statement recorded by the complainant “W” (name withheld) alleging therein that the victim “P” (name withheld) was his minor daughter staying in 9th Class. On 28.02.2022, at about 11 AM, he was going to drop his daughter at the house of his in-laws situated in Village Malout and while he was standing in front of his house, he noticed the petitioner while standing with a motorcycle near his house. Within his sight, the petitioner took away his daughter on his motorcycle. The petitioner raised alarm and tried to chase them but could not succeed. He alleged that previously also, the petitioner had taken away the victim to his house thrice by enticing her on the pretext of marriage but due to fear of insult, he did not inform the police and brought his daughter back with the intervention of the Panchayat. He prayed for taking action against the culprit.

4. After registration of FIR, investigation proceedings were initiated. The victim was recovered. On 15.04.2022, her statements under Sections 161 and 164 of Cr.P.C. were recorded. The petitioner was arrested on 12.05.2022. Offences under Sections 6 of POCSO Act and Section 376 of IPC were added subsequently as the victim was found to be pregnant. Her pregnancy was got terminated in pursuance of order passed by the Court of Chief Judicial Magistrate, Fazilka. The petitioner was arrested. After completion of investigation, challan was presented in the Court against him and presently, he is facing trial for commission of aforementioned offences. He has filed an application for grant of regular bail before learned trial Court which had been dismissed vide order dated

17.01.2023.

5. Learned counsel for the petitioner argued that he had been falsely implicated in this case. Infact, there was lover affair between the victim and himself and the victim had come to his house without informing her parents. Rather it was the petitioner who had left the victim at her house. She had never been enticed away/kidnapped by the petitioner. On 15.04.2022, the victim had been produced before the police and the Court by one Kulwinder Kaur and in her statements recorded therein, she had clearly stated that she had willingly left her house and was not kidnapped by the petitioner. He further argued that the victim in her sworn deposition had not supported the prosecution version to the effect that she had been kidnapped and ravished by the petitioner, rather she had deposed that she had left her house as she had a quarrel with her parents and had stayed at Gurudwaras at Amritsar and Bihar. He further argued that now even the complainant had given permission to perform marriage of the victim with the petitioner and had sworn an affidavit (Annexure P-3) in this regard. He submitted that the petitioner was in custody since long. No useful purpose was going to be served by keeping him in custody any more and urged that the petition deserves to be allowed.

6. Per contra, learned State counsel as well as learned counsel for the complainant argued that the allegations against the petitioner were serious in nature. The petitioner had ravished the minor victim. On conducting her medical examination, she was found to be 13 weeks

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pregnant. Her pregnancy was directed to be medically terminated. The foetus in the womb of the victim had been sent for DNA analysis and the same was compared with the DNA profiling of the petitioner. The report of the Forensic Science Laboratory had been received now as per which, the genetic profile of the petitioner was consistent with the DNA profile of the foetus as being of the biological father and the genetic profile of the victim on comparison with the genetic profile of the foetus was found to be of biological mother. He argued that this fact proved that it was the petitioner who had made the victim pregnant by committing the act of aggravated penetrative sexual assault upon her. The consent of the victim who was minor was of no avail. Hence, he argued that the petition is liable to be dismissed.

7. I have heard learned counsel for the parties and have perused the record.

8. The petitioner is alleged to have enticed away the victim on the pretext of performing marriage and is further alleged to have committed the act of aggravated penetrative sexual assault upon her. Copy of DNA report and copy of order passed by learned CJM, Fazilka on 30.05.2022 has been placed on record by learned State counsel which show that the victim was found to be 13 weeks pregnant and her pregnancy was ordered to be medically terminated in pursuance of directions of the Court. DNA/genetic profiling of the foetus has matched with the genetic profiling of the petitioner. The allegations against the petitioner are serious one. The plea that he will perform marriage with the victim

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cannot be considered to be a reason for extending benefit of bail to him.
Keeping in view the nature of the allegations as levelled against the petitioner, the quantum of sentence which the conviction of the petitioner may entail and the attendant facts and circumstances of the case, I am of the considered opinion that the petition does not deserve to be allowed and hence the same is dismissed.

22.11.2023
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(MANISHA BATRA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No