

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

222

CRM-M-1965-2024 (O&M)
Date of Decision: 07.05.2024

SATISH

....Petitioner

VERSUS

STATE OF HARYANA AND ANR.

....Respondents

CORAM : HON’BLE MRS. JUSTICE MANISHA BATRA

Present : Mr. Deepak Kundu, Advocate for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

MANISHA BATRA, J. (Oral)

The present petition has been filed under Section 439 of Cr.P.C.

seeking regular bail in FIR mentioned below:-

FIR No.	Date	Police Station	Sections
36	20.01.2023	P.S. Sampla, District Rohtak	Section 365 of IPC (Sections 363 & 366 of IPC added later on)

2. Brief facts relevant for the disposal of this case are that the
aforementioned FIR was registered on 21.01.2023 on the basis of written
complaint submitted by the complainant-‘S’(name withheld) alleging therein that
on 20.10.2023 at about 11:00 AM, his youngest daughter-‘K’(name withheld) who
was about 17 years old, had left the house without informing anyone and he had
been unable to trace her. Initially, a case under Section 365 of IPC was registered.
Investigation proceedings were initiated. The victim was recovered on 18.04.2023
from the custody of the petitioner and from his house. Her statement under Section
164 of Cr.P.C was recorded. Her medical examination was also conducted.

Offence under Sections 365 of IPC was deleted and offences under Sections 363

and 366 of IPC were added. The petitioner was arrested on 20.04.2023. Investigation has since been completed and challan stands presented in the Court. The petitioner had moved an application for grant of regular bail before the learned Trial Court which had been dismissed vide order dated 11.07.2023.

3. The present petition has filed by the petitioner on the grounds and it is argued by learned counsel for the petitioner that he has been falsely implicated in this case. In fact, the victim had left her house as per at her own accord and nothing was wrong happened to her. Even in her statement recorded under Section 164 of Cr.P.C, she had stated so. She is major now and wants to perform marriage with the petitioner. The petitioner is in custody for a period of over one year. Trial is likely to take time. No useful purpose would be served by keeping him in custody anymore. Therefore, it is urged that petitioner deserves to be released on bail.

4. Status report has been filed by respondent-State, as per which, there was sufficient evidence on record to prove that the petitioner had allured the minor victim on the pretext of performing marriage with her. There is nothing on record to show that trial would take time. The victim is yet to be examined. The possibility of petitioner intimidating the witnesses or absconding cannot be ruled out. Hence, it is argued that the petitioner does not deserve to be given concession of bail.

5. I have heard learned counsel for the petitioner and State counsel at considerable length and have gone through the record.

6. The petitioner is alleged to have enticed away the daughter of the complainant on the pretext of performing marriage with her. In her statement recorded under Section 164 of Cr.P.C, the victim had stated that she had left her house at her own and nothing wrong had happened with her. Investigation has now been completed. Challan has been presented against the petitioner under Sections

363 and 366 of IPC. The petitioner is in custody for over a period of one year. The trial is likely to take time. Since in her statement recorded under Section 164 of Cr.PC, the victim has stated that she had left her house at her own will, therefore, it is a debatable question as to whether the offence of kidnapping had been committed or not as the said question is to be decided by the learned Trial Court on the basis of evidence to be led during the course of trial. The well settled proposition of law is that where a prosecutrix leaves her father’s house at her own accord and willingly accompanies the accused the part played by the accused then can be regarded as facilitating the fulfilment of the desire of the prosecutrix and it falls short of an inducement to her to slip out of keeping of her lawful guardian and does not tantamount to “taking” within the meaning of definition of kidnapping under Section 361 of IPC. At this stage, there is nothing on record to show that that the petitioner had played any active role in minor’s leaving the custody of her lawful guardian. Therefore, in view of this fact as well as keeping in view the nature of allegations as levelled against the petitioner, the period of his incarceration and the well settled proposition of law to the effect that bail is the rule and jail is an exception but without commenting upon the merit of the case, I am of the considered opinion that the petitioner deserves to be extended benefit of bail. Accordingly, the present petition is allowed and the petitioner is directed to be released on regular bail subject to his furnishing personal/surety bonds to the satisfaction of the trial Court/Duty Magistrate concerned

7. Pending applications, if any, also stand disposed of.

07.05.2024
Deepak Patwal

(MANISHA BATRA)
JUDGE

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| 1. | <i>Whether speaking/reasoned</i> | <i>Yes/No</i> |
| 2. | <i>Whether reportable</i> | <i>Yes/No</i> |