



IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

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CRM-M-8351-2024 (O&M)
Date of decision: 17.05.2024

Sajan Singh ...Petitioner

Versus

State of Punjab and others ...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. H. S. Batth, Advocate
for the petitioner.

Mr. A. S. Samra, AAG, Punjab.

Mr. Divyansh Vats, Advocate
for respondent Nos. 2 and 3.

MANISHA BATRA, J. (Oral)

1. This petition has been filed by the petitioner under Section 439 Cr.P.C. seeking regular bail in case bearing FIR No. 71 dated 09.05.2019, registered under Sections 363, 366-A of IPC at Police Station City Patti, District Tarn Taran.
2. Brief facts of the case relevant for the purpose of disposal of this petition are that the aforementioned FIR was registered on the basis of the statement recorded by the complainant 'J' (*name withheld*) alleging therein that the victim 'M' (*name withheld*), who was her younger daughter aged

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about 17 months and 11 month, was sweeping the floor of the courtyard on 21.04.2019 at about 12:30 PM. As she had not come inside the room for a fair amount of time, the complainant went outside and found the victim while being taken away by the petitioner on his motorcycle. She also noticed that the father and brother of the petitioner were also going along with them on a separate motorcycle. By alleging that the petitioner and his family members, in connivance with each other, had kidnapped her daughter by enticing her away on the pretext of performing marriage with her, she prayed for taking action against the culprits. Investigation proceedings were initiated. The petitioner was arrested on 18.12.2023. The victim was recovered on 04.01.2024. She was medically examined. Her statement under Section 164 of Cr.P.C. was also recorded. The petitioner had moved an application before the trial Court for grant of regular bail but the same had been dismissed, vide order dated 10.01.2024.

3. Learned counsel for the petitioner has argued that in fact the petitioner and the victim were in love with each other. They had tried their best to convince their parents to perform their marriage but since their efforts turned futile, therefore, the victim, out of her free will and without any pressure, had gone with the petitioner and has solemnized marriage with him on her attaining majority and thereafter, they were living happily as a couple. Subsequently, a compromise had also taken place before their respective family members and the marriage of the victim was solemnized by her parents. The petitioner and the victim are blessed with a son, who is now 04 years' old. The investigation has since been completed. The victim has sworn

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an affidavit (Annexure P-3) in favour of the petitioner. The custodial interrogation of the petitioner is no more required. Trial is likely to take time. No useful purpose would be served by keeping him in custody anymore. Therefore, it is argued that the petition deserves to be allowed.

4. Status report has been filed by the respondent-State. Learned State counsel has argued that as the victim was minor at the time of occurrence and the petitioner has enticed her away, therefore, he is not entitled to get benefit of bail.

5. It is relevant to mention here that respondent No. 3/victim as well as respondent No. 2/complainant have appeared in person before this Court along with their counsel and have stated that respondent No. 3 has performed marriage with the petitioner and a male child has also been born to them, who is now 04 years of age and also that they no objection, if the petition is allowed.

6. I have heard learned counsel for the parties and have also gone through the material placed on record very carefully.

7. The petitioner is alleged to have enticed away the victim when she was of the age of about 17 years and 11 months and is further alleged to have performed marriage with her. The petitioner is in custody since 18.12.2023. To constitute the offence of kidnapping as defined under Section 361 of IPC and punishable under Section 363 of IPC, it is necessary for the prosecution to establish the element of taking away. The well settled proposition of law is that the question whether there was “taking” must be decided with reference to all the circumstances of the case including the

question whether the girl was of sufficient maturity and intellectual capacity to think for herself and make up her own mind, the circumstances under which and the object for which, she felt it necessary and worthwhile to leave her guardian's protection. Where the 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 the prosecutrix to slip out of keeping her lawful guardian and does not tantamount to "taking" within the meaning of definition of kidnapping under Section 361 of IPC. It is also well settled proposition of law that the accused must have played an active role in minor's leaving the custody of her lawful guardian to prove the offence under Section 363 of IPC and where the minor is of the age of discretion leaves the house of her parents of her own accord and goes with the accused, the accused cannot be charged with the offence of kidnapping. Reference in this regard can also be made to the observations made in *State of Punjab v. Rama Ram, 2009 (4) RCR (Criminal) 775*, *Ajit Singh v. State of Haryana, 2007 (3) RCR (Criminal) 287 (P&H)* and *Deep Chand @ Dipu v. State, 2000 Criminal Law Journal 463* and *Ramesh Singh v. State, (1988) 3 Crimes 890*. As in this case, it is apparent that the victim, who was aged about 17 years and 11 months, was of course of the age of discretion. She had left her house voluntarily and it was on her insistence that the petitioner had taken her along with him and subsequently, they have performed marriage with each other and even now have been blessed with a child, therefore, it is of course a debatable question as to whether the petitioner had committed the offence of kidnapping or not?

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8. Further, Annexure P/2 is the copy of the compromise shown to have been arrived at between the parties and Annexure P/3 is the copy of an affidavit shown to have been sworn by respondent No. 3. Though at this stage, no veracity can be attached to these documents, however, keeping in view the fact that the petitioner has performed marriage with the victim and they are having a male child out of the wedlock, coupled with the fact that despite the fact that the petitioner is in custody for the last about 06 months, *challan* has been presented and the trial is likely to take time as well as the fact that it is a debatable question as to whether any case for commission of offence punishable under Sections 363 and 366-A of IPC is made out or not, I am of the considered opinion that the petitioner can be granted benefit of regular bail.

9. Accordingly, the present petition is allowed and the petitioner is ordered to be released on regular bail, subject to his furnishing personal/surety bonds to the satisfaction of the trial Court/Duty Magistrate concerned.

10. It is made clear that any observation made herein above is only for the purpose of deciding the present petition and the same shall have no bearing on the merits of the case.

17.05.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes