

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

CRM-M-8764-2023 (O&M)
Date of decision: 28.02.2024

Arshpreet Singh @ Gulla ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Akmaan Gagneja, Advocate
for the petitioner.

Mr. Satjot Singh, AAG, Punjab.

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. 116 dated 07.09.2022, registered under Sections 363, 366-A of IPC (Sections 458, 346, 120-B of IPC added later on) at Police Station Jaito, District Faridkot.
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 'C' (*name withheld*) on 07.09.2022 alleging therein that the victim 'P' (*name withheld*), who is her 17 years old daughter, was found missing from the house in the morning of 30.08.2022, when she had woken up at around 05:00 AM. She alleged that they had tried

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to make search for her daughter everywhere but could not find her. She raised suspicion that her daughter was enticed away by the present petitioner with the help of his friends on the pretext of performing marriage with her. On the basis of this statement and on registration of FIR, the investigation proceedings were initiated. The victim was recovered from the custody of the petitioner on 11.09.2022, when she arrived with him at the Railway Station. The petitioner was arrested. Statement of the victim under Section 164 Cr.P.C. was recorded before the Sub Divisional Judicial Magistrate, Jaitu on 12.09.2022, wherein she disclosed that on the intervening night of 29-30.08.2022, the petitioner along with some other persons had come to her house and had caught hold of her and while pointing weapon towards her and extending threats to her, had taken her out of the house. She was taken by them to different places and lastly, they had stayed in Gurdwara Baba Deep Singh Ji at Hazur Sahib, from where, she had informed her family members. On the basis of the statement recorded by the prosecutrix, four persons named by her were nominated as co-accused. One co-accused Manpreet Singh was arrested on 06.11.2022. Challan qua the petitioner and him was presented before the concerned Court after completion of investigation. The co-accused were subsequently arrested and on completion of usual formalities of investigation, supplementary challan was presented against them. Presently, all of them are facing trial for commission of aforesaid offences. The petitioner had moved an application for grant of regular bail before the trial Court but the same was dismissed, vide order dated 09.11.2022.

3. The present petition has been filed by the petitioner on the ground and his counsel has argued that the ingredients for commission of

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offences punishable under Sections 363 and 366-A of IPC have not been made out at all against the petitioner as the victim is a major. They were in love with each other and since she wanted to marry him, as such it was out of her own sweet will that she had left the house of her parents and had accompanied him. The version of the prosecutrix, as recorded under Section 164 Cr.P.C., that she had been forcibly taken away is highly improbable and unnatural. Learned counsel for the petitioner has drawn attention of this Court towards Annexure P-3, which are two photographs, wherein the petitioner and the victim are seen in an intimate and very comfortable condition. The petitioner is in custody since 11.09.2022. The trial is likely to take some time. Intentional delay has been caused in recording the statements of the witnesses, so as to harass the petitioner. Therefore, it is prayed that the present petition deserves to be allowed.

4. *Per contra*, learned State counsel has argued that the complicity of the petitioner in the subject offences has been *prima facie* established on the basis of the statement as recorded by the victim under Section 164 of Cr.P.C. The victim has since been examined and she has supported the prosecution version. There is nothing on record to show that there would be any undue delay in conclusion of trial. The allegations against the petitioner are serious in nature. Therefore, it is argued that the present petition is liable to be dismissed.

5. I have heard learned counsel for the parties at considerable length and have also gone through the material placed on record carefully.

6. As per the prosecution version itself, the victim was 17 years of age, when she was allegedly kidnapped by the petitioner from the lawful

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guardianship of her parents on the intervening night of 29-30.08.2022 with intent to compel her to marry the petitioner, or to seduce or force her to illicit intercourse or knowing that it is likely that she will be forced or seduced to illicit intercourse. 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. The prosecutrix stayed with the petitioner over a period of 10 days. Her custody was restored to her guardian when the petitioner himself brought her through train on 11.09.2022. There is nothing on record to suggest that during this period of 10-11 days, she herself made any effort to get herself released from the custody of the petitioner or raised any hue and cry when she was taken to different places. As such, it is debatable as to whether she was forcibly taken away or not? It is well settled law that 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 fulfillment 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.

7. So far as the offence under Section 366A of IPC is concerned, as per this section, whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be liable for punishment. This provision requires two things viz.:

- (i) inducing a girl under eighteen years of age to go from any place or to do an act and;
- (ii) intention or knowledge that she will be forced or seduced to illicit intercourse with a person.

8. In this case, the petitioner is in custody since 11.09.2022. The statement of the victim has already been recorded. Therefore, there is not question of criminally intimidating her. The victim was of sufficient maturity and intellectual capacity at the time when she had been allegedly taken away by the petitioner. The petitioner might have played some active role in taking away the victim. However, at this stage, it cannot be stated that simply because she was not restored to her guardians and was not tried to be

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persuaded to go back to her parents, the petitioner had committed the offences punishable under Section 363 and 366-A of IPC. Some photographs have been placed on record by the petitioner showing him and the victim to be in an intimate and very comfortable condition, although, the veracity of the same is to be established by the trial Court. It is also a debatable question as to whether offence punishable under Section 458 of IPC had been committed by him? The trial is likely to take some time. Only one or two witnesses have been examined so far, despite the fact that the charges in this case were framed on 06.01.2023. Keeping in view the nature of allegations as levelled against the petitioner, the period of his incarceration and attendant facts and circumstances of the case, I am of the considered opinion that no useful purpose would be served by keeping him in custody anymore.

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.

28.02.2024
Waseem Ansari/Parveen Sharma

(MANISHA BATRA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>