

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

285

CRM-M No.14239 of 2024
Date of decision: 24.04.2024

Arshdeep Singh @ Arsh ... Petitioner

Vs.

State of Punjab and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Ritesh Pandey, Advocate,
for the petitioner.

Ms. Ruchika Sabherwal, Sr. DAG, Punjab.
for the respondent-State.

MANISHA BATRA, J.(Oral)

1. The present petition under Section 438 of Code of Criminal Procedure has been filed by the petitioner seeking anticipatory bail in case bearing FIR No.55 registered under Sections 363, 366-A and 120-B of IPC at Police Station Mattewal, District Amritsar Rural.
2. Brief facts relevant for the purpose of disposal of this petition are that the aforementioned FIR had been registered on the basis of statement recorded by the complainant "B" (name withheld) on 07.11.2023 alleging therein that her daughter "K" who is 15 years and 8 months old and is a minor had gone to school on 02.11.2023 but had gone missing and did not return. She had been making search for her and

Neutral Citation No.2024:PHHC:056177

was sure that she had been enticed away by the accused Ajay Pal Singh who was a co-villager and also suspected that his brother Joban Singh too had a hand in the kidnapping of her daughter. On 29.11.2023, the victim came to the police station. Her statement under Section 164 of Cr.P.C. was got recorded wherein she disclosed that on the fateful day, while she was coming back from the school, she was intercepted by the accused Ajay Pal Singh who was on motorcycle and who took her to Village Jandiala and thereafter to Amritsar. She further disclosed that the petitioner was accompanying them at that time and further stated that one Lakhwinder Kaur arranged a rented room for them where the co-accused Ajay Pal Singh had ravished her. Offences under Sections 376 of IPC and Section 6 of Protection of Children from Sexual Offences Act, 2012 (For short “POCSO Act”) were added. The accused Ajay Pal Singh and Joban Singh were arrested on 14.12.2023. Challan against them has been presented in the Court and they are facing trial for commission of aforementioned offences whereas the investigation against the petitioner is underway as he could not be arrested so far.

3. Learned counsel for the petitioner has argued that he has been falsely implicated in this case. He is an only 20 year old youth. The victim was having affair with the co-accused Ajay Pal Singh and it is the said accused who had allegedly committed rape upon the victim. The allegations in the FIR on the face of record do not make out any case for commission of offences under Sections 363 and 366-A of IPC as against the petitioner as the victim was clearly willing party to go with the

Neutral Citation No.2024:PHHC:056177

co-accused Ajay Pal Singh on her own and had stayed with him in a rented accommodation. The part which is alleged to have been played by the petitioner can be considered to be an act of facilitating the fulfilment of the intention of the victim to live with the co-accused. She herself slipped out of the kidnapping of her lawful guardian which does not tantamount to taking away, to constitute the offence of kidnapping. It is argued that even in her statement recorded under Section 164 of Cr.P.C., the prosecutrix had not attributed any act of commission of rape upon her by the present petitioner or facilitating that act by the co-accused. The FIR had been lodged after unexplained delay of five days. The petitioner is ready to join the investigation. His custodial interrogation is not required. Therefore, it is urged that he deserves to be given concession of pre arrest bail. To fortify his argument, learned counsel for the petitioner has placed reliance upon authorities cited as **Shyam and another v. State of Maharashtra**, AIR 1995 SC 2169; **S. Varadarajan v. State of Madras**, AIR 1965 SC 942 and **Devki Nandan v. State of Haryana and another**, 2015 (4) R.C.R. (Criminal) 64.

4. Status report has been filed by the respondent-State as per which, the petitioner had played a major part in kidnapping of the victim who was a minor and taking away her of her lawful guardianship by helping the accused Ajay Pal Singh in the same. The allegations against him are serious in nature. His custodial interrogation is required for conducting thorough investigation in the matter. Therefore, it is argued that the petition does not deserve to be allowed.

Neutral Citation No.2024:PHHC:056177

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

6. As per the allegations, on 02.11.2023, the co-accused Ajay Pal Singh after intercepting the victim while she was on way to her house on the school, had asked her to accompany her to the village, made her board on his motorbike and took her firstly to a village and then to Amritsar wherein she was ravished by him. In her statement recorded under Section 164 of Cr.P.C., the victim had alleged that the present petitioner was also with the co-accused when he had taken her on his motorbike. There is no allegation that the petitioner had played any active role whatsoever in leaving the custody of her lawful guardian by the minor victim. Rather she is shown to have willingly accompanied the co-accused. To constitute the offence of kidnapping, as defined under Section 361 of IPC and which is punishable under Section 363 of IPC, it is for the prosecution to establish the element of 'taking away'. The well settled proposition of law is that the question whether there was "taking" has to be decided with reference to several circumstances including that whether the girl was having intellectual capacity to think for herself and make up her own mind as well as the object for which, she felt it necessary and worthwhile to leave her guardian's protection. In **Shyam and another's** case (Supra), the conviction of accused under Section 366 of IPC was set aside as the prosecutrix had not put up any struggle or raise alarm while allegedly taken away by the accused and appeared to be

Neutral Citation No.2024:PHHC:056177

a willing party to go with the accused on her own. It was held that the culpability of the accused was not established. In **S.Varadarajan's** case (Supra), it was to comply the wishes of the prosecutrix that the accused had taken her to office of Sub Registrar and copy of agreement of marriage registered on her insistence. It was held that part played by the accused could be regarded as facilitating the fulfilment of the intention of the girl and did not tantamount to "taking". The accused was acquitted. In **Devki Nandan's** case (Supra), the prosecutrix had not put any struggle nor raise any alarm when allegedly taken away by the accused. She had solemnized run away marriage with the accused. It was held that the offence of kidnapping was not made out.

7. The petitioner, in this case, is not shown to have played any active role in leaving the custody by the minor of her parents. As such, it is a debatable question as to whether ingredients for commission of offence under Section 363 of IPC are made out against him or not and such a question has to be decided by the learned trial Court on the basis of evidence to be led before it. The allegations as levelled against the petitioner do not prima facie make out any case for commission of offences punishable under Sections 366-A and 376 of IPC nor it is made out from these allegations that he had hatched any conspiracy with the co-accused for commission of the above mentioned offences or even offence under Section 6 of POCSO Act. As such, in the considered opinion of this Court, it cannot be stated to be a case where the custodial interrogation of the petitioner is required or any recovery is to be effected

Neutral Citation No.2024:PHHC:056177

from him. Rather, it is a fit case for exercising powers under Section 438 of Cr.P.C. and for extending benefit of pre arrest bail to the petitioner as by detaining him in custody, no useful purpose would be served.

8. Accordingly, the petition is allowed and the petitioner is directed to appear before the Investigating/Arresting Officer to join investigation within 15 days or as and when required thereafter. In the event of his arrest, the Investigating/Arresting Officer shall release the petitioner on bail on furnishing personal/surety bonds to his satisfaction. The petitioner shall also abide by the conditions as envisaged under Section 438(2) Cr.P.C.

9. It is clarified that observations made hereinabove, shall not be construed as an expression of opinion on the merits of the case.

24.04.2024
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(MANISHA BATRA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No