

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

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CRM-M-15679-2022 (O&M)
Date of decision: 16.01.2024

Baldev Singh @ Kali ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. S. S. Maini, Advocate
for the petitioner.

Mr. R. S. Khaira, DAG, Punjab.

MANISHA BATRA, J. (Oral)

1. Prayer in this petition, filed by the petitioner under Section 439 Cr.P.C., is for grant of regular bail in case bearing FIR No. 43 dated 07.03.2021, registered under Sections 363, 366-A, 376 of the IPC; Section 3, 4 of the POCSO Act, 2012 and Section 3(2)(VA) of the SC/ST Act at Police Station Sadar, Sri Muktsar Sahib.
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 his daughter 'P' (*name withheld*), aged about 16 ½ years, had gone missing from his house in the morning of 06.03.2021. He had launched hunt

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for her and had come to know that she had been taken away by the petitioner, who was living with his relatives in their village from the last one year, on the pretext of performing marriage with her. Initially, a case under Section 363 and 366-A of IPC was registered. Investigation proceedings were initiated. The prosecutrix was recovered from the custody of the petitioner on 21.03.2021. Her statements were recorded. Offences under Sections 376 IPC and Section 3(2)(V-A) of the SC/ST Act were added. The victim was medically examined and offences under Sections 3, 4 of the POCSO Act were also added. The petitioner was arrested on 21.03.2021 and he too was medically examined. After completion of necessary investigation and usual formalities, *challan* was presented in Court and presently, the petitioner is facing trial for the aforementioned offences. He had moved an application for grant of regular bail before the trial Court but the same was dismissed, vide order dated 09.03.2022.

3. It is submitted in the petition and learned counsel for the petitioner has argued that the petitioner has been falsely implicated in this case. In fact, the victim had gone with the petitioner as per her own will as she wanted to marry him and had neither been enticed away nor induced on the pretext of performing marriage with her. He is in custody since 21.03.2021. The statement of the victim has since been recorded. There were no chances of him intimidating her. The trial is likely to take some time. The victim was not a minor. No useful purpose would be served by keeping him in custody anymore. With these broad submissions, it is urged that the present petition deserves to be allowed.

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4. The respondent-State has filed status report to the effect that the semen detected on the vaginal swabs of the victim had matched with the DNA profiling of the blood of the petitioner. The victim was a minor girl. Her consent was immaterial. In her statement recorded before the Court, she has deposed against the petitioner. The trial is being expedited. The allegations are serious in nature. Therefore, it is argued that the present is liable to be dismissed.

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

6. The petitioner is alleged to have enticed/taken away the victim, who was a minor as on the date of occurrence, on the pretext of performing marriage with her and is alleged to have subjected her to sexual intercourse/aggravated penetrative sexual assault. The FSL report has showed that the semen detected on the vaginal swabs of the victim matched with the DNA profiling of the blood of the petitioner. The statement of the victim has already been recorded and trial is going on at a proper pace. There is nothing on record to show that there would be any undue delay in conclusion of trial. No doubt, in her statement recorded under Section 164 Cr.P.C., the victim had stated that she had gone with the petitioner as per her own will. Consensual sex between the adults is no offence but since she was below the age of 18 years, the act of the petitioner squarely falls within the definition of rape and as such her consent is not material. The well settled proposition of law as held by Hon'ble Supreme Court in *Iqbal vs. State of Kerala : 2007 (4) RCR (Criminal) 867* is that the sexual intercourse with a minor girl, with her or without her consent, amounts to rape. Keeping in view the gravity of offences

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alleged to have been committed by the petitioner, the quantum of sentence which the conviction may entail and the attendant facts and circumstances, this Court is of the considered view that the petitioner does not deserve to be given concession of regular bail. Hence, the petition stands dismissed.

7. It is clarified that observations made hereinabove are only for the purpose of deciding the present petition and the same shall not be construed as an expression of opinion on the merits of the case.

16.01.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No