

CRM-M-17944-2024
Date of decision: 19.04.2024

...PETITIONER

V/S

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Vipin Mahajan, Advocate
for the petitioner.

Mr. Vikas Bhardwaj, AAG, Haryana.

HARPREET SINGH BRAR J. (ORAL)

1. This is the first petition filed under Section 439 Cr.P.C. seeking regular bail to the petitioner in case bearing FIR No.359 dated 04.05.2023 registered under Sections 365, 376, 379-A, 427, 506, 467, 468, 471, 420, 201 IPC and Section 6 of POCSO Act at Police Station Camp Palwal, District Palwal, Haryana.

2. The brief facts of the case are that on 04.05.2023, the police party was present on Crime Patrolling Duty near Kithwari flyover. The complainant met them and moved her complaint. She submitted that she is a resident of village "A" Palwal. She is a widow and has two daughters and one son. Her younger daughter is studying in BSC II year. The date of birth of her daughter is 19.08.2024. On 03.05.2023, she had gone to her College at around 8.00 AM in a Roadways Bus. At around 11.00 AM Rohit, resident of their village, came to their house and told that victim has been kidnapped by accused Parveen (petitioner herein) and his friends, on the point of weapons. They have taken

her in a car and Rohit saw them. Complainant searched for the victim but could

not find her. She went to the house of petitioner/accused Parveen several times and asked him to return the victim, but no effect. Rather petitioner/accused Parveen abused and intimidated the complainant. Petitioner/accused Parveen, Little, Dushyant and Janak have illegally restrained the victim and they have committed some wrong act with her. Appropriate proceedings be initiated against the accused.

3. Learned counsel for the petitioner *inter alia* contends that admittedly, as per the case set up by the prosecution, the date of birth of the prosecutrix is 19.08.2004 and the date of occurrence as indicated in the FIR (supra) is 03.05.2023. At that time, the prosecutrix was studying in B.Sc. 2nd year. The proximity of the age between the petitioner and prosecutrix also suggest of the consensual relationship. Learned counsel further relies upon Annexures P-3 to P-6 and submits that petitioner and prosecutrix were in love with each other and they had eloped from their houses, due to the opposition of family of the prosecutrix and they performed their marriage on 25.08.2022 at Arya Smaj Mandir, Faridabad. The certificate in this regard is available on record as Annexure P-3. Thereafter, the management of the temple recorded the statement of the prosecutrix, where she has categorically stated that she is marrying with the petitioner with her free consent. Her statement is available on record as Annexure P-4. Further, Annexures P-5 and P-6, the marriage photographs, clearly indicate that prosecutrix married with the petitioner out of her own volition and sweet will and on the date of marriage, the prosecutrix was major. After the marriage, both the petitioner and prosecutrix went back to their respective houses, in order to convince their parents to accept their matrimonial alliance but the parents of the prosecutrix did not agree due to the petitioner belonging to a different caste. Ultimately, on 03.05.2023, they again ran away and on the basis of the statement made by the mother of the

prosecutrix, the FIR (supra) was lodged and on 05.05.2023, the petitioner and prosecutrix were traced by the jurisdictional police authorities at Vrindavan, where under the pressure of her family, she gave a statement against the petitioner under Section 164 Cr.P.C., however, she travelled all the way with the petitioner in a bus, which clearly shows that it is a consensual which lacks *mens rea*. The petitioner was arrested and then, detailed inquiry was conducted by Senior Superintendent of Police, Palwal and it was concluded that no offence is made out and on the basis of the finding of the inquiry (Annexure P-10), the petitioner was discharged vide order dated 18.07.2023 (Annexure P-11). The investigation was thereafter transferred from District Palwal to District Nuh and the investigating agency added offences under Section 6 of the POCSO Act, on the premise that the petitioner was in relationship with the prosecutrix when she was minor and thereafter on 19.10.2023, the petitioner was again arrested. It is further contended that Whats App chat (Annexure P-13) and the marriage certificate and her statement before the management of temple, where they got married clearly indicates that petitioner has been falsely implicated in the present case. Moreover, the prosecutrix, due to the harassment and atrocity by her family, has committed suicide in her parental home, when the petitioner was in jail and the petitioner has been implicated in the other case under Section 306 IPC.

4. Per contra, learned State counsel, on instructions from ASI Mukesh Kumar, opposes the prayer of the petitioner on the ground that in statement recorded under Section 164 Cr.P.C., the prosecutrix has named the petitioner and made specific allegations with regard to rape and she has also left a suicide note, in which, she has reiterated her allegations against the petitioner.

5. Having heard learned counsel for the parties and after perusing the

record of the case with their able assistance, it transpires that the investigating agency has already concluded the investigation and has submitted the final report under Section 173 Cr.P.C. The petitioner is behind the bars since 07 months and 19 days. The trial of the case is likely to take long time as out of 22 witnesses cited, none has been examined so far. Further incarceration of the petitioner, without there being the prospect of the conclusion of the trial, in the near future, would be violative of his rights under Article 21 of the Constitution of India. Culpability, if any, would be determined at the time of the trial. No useful purpose shall be served by further detention of the accused/petitioner.

6. In view of the above, the present petition is allowed. Thus, without commenting upon the merits of the case lest it may prejudice the outcome of the trial, the petitioner-Parveen @ Praveen Kumar is ordered to be released on regular bail during trial on his furnishing bail bonds/surety bonds to the satisfaction of Illaqa Magistrate/Trial Court.

7. Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and the trial Court shall proceed without being prejudiced by observations of this Court.

April 19, 2024
manisha

(HARPREET SINGH BRAR)
JUDGE

(i)	Whether speaking/reasoned	Yes/No
(ii)	Whether reportable	Yes/No