

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

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CRM-M No.18916 of 2024
Date of decision: 19.04.2024

Satwinder Singh ... Petitioner

Vs.

State of Punjab ... Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Vishal Goel, Advocate,
for the petitioner.

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

Mr. Sukhdeep Singh, Advocate,
for the complainant.

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.02, dated 04.01.2024, registered under Sections 363 and 366 of IPC at Police Station Badali Ala Singh, District Fatehgarh Sahib.
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 “K” (name withheld) making allegations that her daughter “M” (name withheld) who was studying in

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12th Class and was a minor had left home for her school in the morning of 01.01.2024 but did not return. She made call to her school teacher and was informed that she was absent from the school on that date. On making further inquiries, it was revealed that she had been enticed away by the petitioner who is residing in her neighbourhood on the pretext of performing marriage with her. The victim was recovered during investigation. Her statement under Section 164 of Cr.P.C. has been recorded wherein she stated that she had left her home at her own volition. She also refused to get her medical examination conducted. The investigation is still underway. The petitioner had moved an application for grant of pre arrest bail before the Special Court, Fatehgah Sahib which was dismissed vide order dated 15.02.2024.

3. It is argued by learned counsel for the petitioner that he has been falsely implicated in this case. Infact, there is love affair between the daughter of the complainant and herself and both of them wanted to perform marriage. The complainant and her family members are against their relationship. It is submitted that the prosecutrix had left her house at her own volition with the petitioner. They had filed a joint petition bearing CRWP No.212 of 2024 before a Coordinate Bench of this Court seeking life and liberty at the hands of family members of the prosecutrix and the said petition has since been disposed of with direction to concerned SSP to protect their lives. The ingredients required for commission of offence punishable under Sections 363 and 366 of IPC are not made out. The victim is infact 17 years and 4 months old. She has

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even refused to accompany her parents as she is apprehending danger to her life at their hands. She is living in Nari Niketan. The petitioner is ready to join the investigation. His custodial interrogation is not required at all. Hence, it is urged that the petition deserves to be allowed.

4. At this stage, power of attorney had been filed on behalf of the complainant and the same is taken on record. It is argued by learned State counsel assisted by learned counsel for the complainant that there are serious allegations against the petitioner who is aged about 30 years. Admittedly, his daughter is minor and is about half of the age of the petitioner. Her consent was not at all material. For conducting thorough investigation in the matter, custodial interrogation of the petitioner is must. Accordingly, it is argued that the petition does not deserve to be allowed.

5. I have heard learned counsel for the parties at considerable length and have gone through the record.

6. As per the allegations, the petitioner had enticed away the minor prosecutrix on the pretext of marrying her or forcing or seducing her to illicit intercourse. He has been booked for commission of offences punishable under Sections 363 and 366 of IPC. To constitute the offence of kidnapping as defined under Section 361 of IPC 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” must be decided with reference to all the circumstances of the case including the question whether the girl

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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 guardian/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 of her lawful guardian and does not tantamount to "taking" within the meaning of definition of kidnapping under Section 361 of IPC. The prosecutrix in her statement recorded under Section 164 of Cr.P.C. disclosed that she had left her house at her own volition. Meaning thereby she did not impute any role to the petitioner in leaving of her house by her. The well settled proposition of law is also 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. Since the prosecutrix who was 17 years and 4 months old i.e. of age of discretion and at the verge of attaining

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majority did not attribute any active role to the petitioner in leaving the custody of her lawful guardian, therefore, the question that as to whether a case for kidnapping by way of enticing her to marry with the petitioner or force or seduce her to illicit intercourse has been made out or not, is such a question which can be decided only on the basis of thorough assessment and evaluation of the evidence which will be led by the prosecution during the course of trial. As such, it is not a case where the custodial interrogation of the petitioner is required or any recovery is to be effected from him and hence, 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. 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. 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.

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

19.04.2024
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(MANISHA BATRA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No