

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

2024:PHHC:062084



209

CRM-M-21568-2024

Date of Decision: 06.05.2024

Amit Pensia @ Heera Lal

.... Petitioner

Versus

State of Punjab

.... Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: - Mr. K.S. Brar, Advocate for the petitioner.

Ms. Aakanksha Gupta, AAG, Punjab.

NIDHI GUPTA, J. (ORAL)

The petitioner has filed the present 1st petition under Section 439 of the Code of Criminal Procedure, 1973, for grant of regular bail in case FIR No. 107 dated 17.08.2023 (Annexure P-1) registered under Sections 363, 366-A and 376 IPC and Section 4 of the Protection of Children from Sexual Offences Act, 2012 at Police Station Khuian Sarwar, District Fazilka.

The aforesaid FIR was registered on the basis of statement of the father of the victim, which is reproduced as under:-

“Statement of Jaipal son of Kanshi ram son of Lakha Ram resident of Shergarh aged about 39 years mobile No. 81464-32195. I would like to state that I am resident of above noted address and I am labourer by occupation. I have two children, elder daughter xxxx aged about 16½ years and younger son Manish aged about 12 years. My daughter xxxx is studying of 10+2 class of Senior Secondary School

Wariyam Khera. On 15.08.2023, after eating food etc, out entire family was sleeping in the courtyard of our house, at about 3.00 AM when I got up to get free from natural call then I saw that my daughter xxxx was not present at her cot. I and my wife Nirmala Devi have searched there in the rooms of house and adjoining area of our house but we could not trace her out. At morning time, I also inquired about it from my relatives and also inquired from the village, then now I came to know that Amit Peshia alias Heeras Lal son of Birbl Ram son of Lekha Ram resident of Shergarh is taken away my daughter xxxx by enticing her under the pretext of marriage. Today I along with Angad Dev Ex-Member of Gram Panchayat son of Krishan Lal resident of Shergarh were coming to inform you.....”

Learned counsel for the petitioner, *inter alia*, submits that the petitioner and the victim were in a consensual relationship. At the time of occurrence, the petitioner was 20½ years of age; whereas the victim was 16½ -year-old. It is submitted that the victim in her statement recorded under Section 164 Cr.P.C. has not supported the case of the prosecution. Even in her testimony as PW-3 (Annexure P-2) before the learned trial Court, the victim has turned hostile. The petitioner has been in custody since 17.08.2023. The trial is likely to take a long time to conclude. No useful purpose would be served by further detention of the petitioner in custody. Thus, it is prayed that petitioner be released on regular bail.

Learned counsel for the State has filed custody certificate dated 03.05.2024, which is taken on record, as per which the petitioner has been in custody as an undertrial for a period of 08 months and 19 days. As per custody certificate, there is no other case against the petitioner. Learned counsel for the State does not dispute the aforesaid submissions of learned counsel for the petitioner. On instructions from ASI Vinod, learned counsel informs that out of total 18 prosecution

witnesses, only 04 have been examined so far. It is further submitted that the victim was recovered from the custody of the petitioner at Bus Stand, Rajpura.

Learned counsel for the petitioner submits that the petitioner and the victim ran away from their respective houses and were thus, recovered by the police from Bus Stand, Rajpura.

Having heard learned counsel for the parties, but without commenting on merits of the case, however, keeping in view the totality of the facts and circumstances of the case; including the custody period undergone by the petitioner and perusal of the custody certificate reveals that there is no other case against the petitioner; and also the fact that conclusion of trial will take considerable time as out of total 18 prosecution witnesses only 04 have been examined so far, and no useful purpose would be served by further detention of the petitioner. Thus, the present petition is **allowed**.

The petitioner-Amit Pensia @ Heera Lal S/o Birbal Ram, is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Chief Judicial Magistrate/Duty Magistrate, concerned.

However, it is made clear that nothing stated above shall be construed as an expression of opinion on the merits of the case.

06.05.2024
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(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No