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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-30445-2022 (O&M)

Date of Decision: 01.02.2024

PAWAN KUMAR

.....PETITIONER

Vs.

STATE OF PUNJAB AND ANOTHER

.....RESPONDENTS

CORAM: HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present: Mr. Nitin Meel, Advocate,
for the petitioner.

Ms. Himani Arora, A.A.G., Punjab.

None for respondent No. 2.

HARPREET KAUR JEEWAN J. (ORAL)

1. The instant petition has been filed under Section 438 Cr.P.C for grant of anticipatory bail to the petitioner in case FIR No. 227 dated 26.06.2020 under Section 376-D of the IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012, registered at Police Station Sadar, District Fazilka.
2. Learned counsel for the petitioner *inter alia* contends that the petitioner and the prosecutrix have performed marriage and both are living together. They are also blessed with a child and the petitioner was also granted an interim bail as per the order dated 06.11.2023 passed by the co-ordinate Bench of this Court.
3. The relevant portion of the aforesaid said order reads as under:-

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“On 24.08.2022 the following order was passed:

“Instant petition has been filed under Section 438 of the Code of Criminal Procedure, 1973 for grant of anticipatory bail in FIR No.227 dated 26.06.2020, registered for offences under Section 376-D, IPC, and Section 6 of Protection of Children from Sexual Offences Act, 2012, at Police Station Sadar Fazilka, District Fazilka (Annexure P-1).

Counsel for the petitioner submits that the petitioner has married the prosecutrix and she is at an advance stage of pregnancy. He has referred to panchayati compromise, Annexure P-2, which has been signed by the prosecutrix as well as her parents.

Notice of motion.

On asking of the Court, Mr. P.S.Grewal, Deputy Advocate General, Punjab accepts notice on behalf of State-respondent No.1. He seeks and is granted time to verify the documents and ascertain the factum of marriage.

List on 07.12.2022.

Status report be filed by the State before the next date.

In the meanwhile, arrest of the petitioner shall remain stayed till the next date ”

Learned counsel for the State has pointed out that Section 376-D IPC was replaced with Section 376 IPC vide Rapat No.29 dated 13.09.2020. Learned State counsel has further pointed out that the prosecutrix was 15½ years of age at the time of the incident and that she refused to get her statement recorded under Section 164 CrPC. Her statement was, however, recorded under

Section 161 CrPC wherein she has stated that she had gone on her own accord and that there were no physical relations between her and the petitioner. Her medical was also done and the report of the FSL dated 20.05.2021 was found to be negative.

List on 01.02.2024.

Meanwhile, the petitioner is directed to join investigation as and when called for. In the event of arrest, the petitioner shall be admitted to interim bail on furnishing adequate bail and surety bonds to the satisfaction of the Arresting Officer. The petitioner shall also abide by all the terms and conditions as specified in Section 438(2) of the Code of Criminal Procedure, 1973.”

4. Counsel for the petitioner further submits that the petitioner has joined the investigation in compliance of the aforesaid order dated 06.11.2023 passed by the co-ordinate Bench of this Court.

5. Learned counsel appearing on behalf of the respondent-State on instructions from ASI Ranjit Singh confirms that the petitioner has joined investigation, the investigation is complete and the further custodial interrogation of the petitioner is not required. He also submits that the final report under Section 173 Cr.P.C. has been presented before the trial Court.

6. As per the status report, dated 06.12.2022, filed by way of an affidavit of Sh. Shubeg Singh, Deputy Superintendent of Police, Sub-Division Fazilka, the date of birth of the prosecutrix is 22.12.2004 and she was minor at the time of the alleged occurrence. Further in order to ascertain the factum of marriage of the petitioner with the prosecutrix, the statement of the prosecutrix was recorded by the investigating agency on 01.12.2022

wherein she has categorically stated that her parents had assured her that they will get her marriage solemnized with the petitioner and a compromise dated 17.06.2020 in this regard was also effected between the parties. However, after the said compromise, her parents forcibly took her to the Civil Hospital and got her medically examined and got registered the present FIR.

7. It is further mentioned in the said report that the prosecutrix has stated that on 01.07.2020, she again went away with the petitioner Pawan Kumar and they solemnized marriage at Gurudwara Sahib. Now prosecutrix/respondent No. 2 and the present petitioner are living happily at Village Chak Araianwala alias Fallianwala as husband and wife. Out of this wedlock, a son namely Amritpal Singh has born on 02.11.2022. Now the prosecutrix is reluctant to pursue the present FIR. Copy of the statement of the prosecutrix has been annexed as Annexure R-1/T with the status report.

8. Keeping in view the above and in view of the reasons recorded in the order dated 06.11.2023 and also the fact that the petitioner has joined investigation, his further custodial interrogation is not required by the Investigating Agency, the present petition is allowed and the order dated 06.11.2023 passed by the co-ordinate Bench of this Court, granting interim bail to the petitioner is made absolute, subject to the conditions laid down in Section 438(2) Cr.P.C.

9. However, it is made clear that nothing expressed hereinabove would be construed to be an expression of opinion on merits of the case.

10. Liberty is reserved in favour of the State/complainant to move for cancellation/recall of the order in case the petitioner violates any

condition stipulated under Section 438 (2) Cr.P.C., or upon showing any other sufficient cause.

11. Pending miscellaneous application (s), if any, shall also stand disposed of.

February 01, 2024
nitin

(HARPREET KAUR JEEWAN)
JUDGE

Whether Speaking	Yes
Whether reportable	No