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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-49415-2023 IN/&
CRM-M-36391-2023 (O&M)
DATE OF DECISION : 06.05.2024

OM PARKASH

V/S

STATE OF PUNJAB

... PETITIONER

... RESPONDENT

CORAM: HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present: Mr. Peeush Gagneja, Advocate for the petitioner.
Ms. Himani Arora, A.A.G., Punjab.
* * * *

HARPREET KAUR JEEWAN, J. (ORAL)

CRM-49415-2023

1. Prayer in the present application is for incorporating newly added Section 376 IPC and Section 6 of Protection of Children from Sexual Offences Act, in the head note and prayer clause of the petition.
2. The amended head note and prayer clause is allowed to be taken on record.
3. Registry is directed to tag the same at the appropriate place.
4. Disposed of.

Main case

5. The instant petition has been filed under Section 438 Cr.P.C for grant of anticipatory bail to the petitioner in case FIR No. 0117 dated 20.09.2022 under Sections 363, 366-A, 120-B of the Indian Penal Code, 1860 (Section 376 IPC and Section 6 of Protection of Children from Sexual Offences Act added later on), registered at Police Station Khuian Sarwar, District Fazilka.

6. On 29.08.2023 following order was passed:

“xxxx Learned counsel for the State has pointed out that recovery of the victim is yet to be made.

Learned counsel for the petitioner has stated that the girl is present in Court today and that she is living happily with the petitioner. It is further the contention that the victim is above the age of 18 years even at the time of the incident as per her School Leaving Certificate which has been appended with the present petition as Annexure P-3.

Learned State counsel had on the first call sought a pass-over to verify the School Leaving Certificate and the date of birth as mentioned in the said certificate. Learned State counsel on instructions from ASI Baghel Singh has stated that the date of birth as mentioned in the School Leaving Certificate is what has been registered with the school.

Learned counsel for the petitioner has further pointed out that both the petitioner and the victim had solemnized their marriage on 18.09.2022 and that they are happily residing together since then.

Notice of motion.

On the asking of the Court, Mr. Adhiraj Singh Thind, AAG Punjab accepts notice on behalf of the State.

List on 28.11.2023.

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 surety and personal 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. The petitioner shall also produce the victim for recording of her statement.”

7. Learned counsel for the petitioner *inter alia* contends that both the petitioner and daughter of the complainant are happily married and even a child was born on 23.04.2024. The petitioner has also joined the investigation in compliance of the order passed by this Court.

8. The aforesaid contentions have been confirmed by the learned State counsel on instructions from ASI Vinod Kumar. However, the State has disputed the date of birth of the prosecutrix as alleged by the petitioner on the basis of the School Leaving Certificate (Annexure P-3). It is the contention of learned State counsel that date of birth of the prosecutrix is 04.02.2006, as per the birth certificate (Annexure R-1). However, it has

been noticed that the said birth certificate has been issued on 21.09.2022 i.e. after the registration of the FIR on 20.09.2022.

9. State counsel has shown the copy of the statement of the prosecutrix having been recorded under Section 164 Cr.P.C. by learned Judicial Magistrate First Class, Abohar whereby the prosecutrix has stated that on 18.09.2023 she has solemnized marriage with the petitioner in a *Mandir* against the wishes of her parents.

10. The petitioner has joined the investigation in compliance of the order passed by this Court and his further custodial interrogation is not required. The controversy regarding the age of the prosecutrix will be adjudicated upon by the trial Court during trial.

11. In view of the aforesaid facts and the reasons recorded in the order dated 29.08.2023 and keeping in view the fact that the petitioner has joined investigation, his custodial interrogation is not required by the Investigating Agency, the present petition is allowed and the order dated 29.08.2023 granting interim bail to the petitioner is made absolute, subject to the conditions laid down in Section 438(2) Cr.P.C.

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

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

06.05.2024

Janki

**(HARPREET KAUR JEEWAN)
JUDGE**

Whether speaking/reasoned : Yes/No ;

Whether reportable : Yes/No