

CRM-M-40253-2022 -1-

213 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-40253-2022
Date of decision: 15th February, 2024

Ankush Kumar ...Petitioner(s)
Versus
State of Punjab ...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Anil Kumar Sharma, Advocate for the petitioner.
Mr. Satjot Singh, AAG, Punjab.

MANISHA BATRA, J (ORAL):-

The present petition has been filed under Section 439 of Cr.P.C.
seeking regular bail in FIR mentioned below:-

FIR No.	Dated	Police Station	Sections
143	03.6.2022	Jamalpur, District Police Commissionerate Ludhiana	363, 366-A of Indian Penal Code, 1860 (for short ‘IPC’) (Section 376 read with Section 511 of IPC and Section 8 of POCSO Act, 2012 added subsequently)

2. Brief facts of the case relevant for the purpose of disposal of this petition are that the aforementioned FIR was initially registered under Sections 363 and 366-A of IPC on the basis of statement recorded by the complainant ‘J’ (name withheld) alleging therein that on 01.06.2022, while he was working in his factory, his daughter had called him on phone and informed that ‘S’ (name withheld) who is his youngest daughter aged about

sixteen and half years had gone to the house of her friend Harsh and had not come back. The complainant immediately rushed back to home and came to know that his daughter has not gone to house of her friend at all. He stated that since then he had made search for her daughter but could not find her. Now he had come to know that some telephonic call was received from a particular phone number on the phone of his mother-in-law who lives with him. On checking, it was found that the said phone number belonged to the present petitioner and it was he who had enticed away the victim on the pretext of performing marriage with her. After registration of FIR, investigation proceedings were initiated. The victim herself come back to her house on 14.06.2022 and recorded her statement wherein she stated that she had been taken away by the petitioner on 05.06.2022. He had committed rape upon her but as she did not let him do so, therefore, he had left her at Railway Station, Amritsar. She also recorded her statement under Section 164 of Cr.P.C. before the Magistrate reiterating the same allegations. Offences under Sections 376 read with Section 511 of IPC and Section 8 of POCSO were added. The prosecutrix was medically examined. The petitioner was arrested on 15.06.2022. He was also medically examined. After completion of necessary investigation and usual formalities, challan under Section 173 of Cr.P.C. was presented in the Court and presently, he is facing trial for commission of offences punishable in the aforementioned Sections.

3. The petition has been filed by the petitioner on the grounds and it has been argued by learned counsel for the petitioner that he has been

falsely implicated in this case. He was in contact with the victim through social media only and had never met her. He was apprehended and arrested from his own house. The subject offences were not at all committed by him. No recovery was effected from him. He does not have any criminal antecedents. The trial is likely to take time. It is further argued that the petitioner has not even been charge-sheeted for commission of offences punishable under Section 376 read with Section 511 of IPC by the learned trial Court and it is only for commission of offences punishable under Sections 363 read with Section 511 and 366-A of IPC and Section 8 of POCSO Act qua which he has been charge sheeted.

4. Status report has been filed by learned State counsel, as per which, there are specific and serious allegations against the petitioner. Learned State counsel argued that the victim was minor at the time of the incident. Though challan was presented against the petitioner for making an attempt to commit rape upon the prosecutrix and qua commission of offence punishable under Section 8 of POCSO Act but in her sworn testimony, she has even levelled allegations that she was subjected to forcible sexual intercourse with the petitioner and it was he who had induced her to go away with him on the pretext of performing marriage with him. As per the status report, charges for commission of offences punishable under Sections 376 read with Section 511 of IPC have not been framed as against the petitioner. Hence it is argued that the petition does not deserve to be allowed.

5. The petitioner is alleged to have enticed away the prosecutrix who was a minor being sixteen years and six months old, as on the date of

incident on the pretext of performing marriage with her and is alleged to have sexually assaulted and made an attempt to commit rape upon her. A copy of charge sheet has been placed on record by learned State counsel which reveals that the petitioner has been charge sheeted only qua commission of offence punishable under Section 363 of IPC read with Section 511, 366-A of IPC and Section 8 of POCSO Act.

6. The offence of kidnapping is defined under Section 361 of IPC and is punishable under Section 363 of IPC. The well settled proposition of law is that the question whether there has been ‘taking’ must be decided with reference to all the circumstances of the case including the question whether the girl 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 the protection of her guardian. If she leaves her father’s house at her own accord and willingly accompanies the accused, then the part played by the accused 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 Section 361 of IPC. Where the accused plays an active role in minor’s leaving the guardianship of minor lawful guardian, then he can be charged for offence of kidnapping. In the instant case, in her statement as recorded under Section 164 of Cr.P.C. the prosecutrix had stated that the petitioner had attempted to commit rape upon her and had taken her on the pretext of introducing her to his mother for the purpose of their marriage.

7. A copy of her sworn deposition as recorded before the learned trial Court has also been placed on record which, however, shows that she deposed that she used to call the petitioner on his cell-phone in the month of July, 2022, he had taken her with him on the pretext of introducing her to his mother for the purpose of marriage and had taken her to Amritsar and then to different places and had also maintained forcible physical relations with him. Though the learned trial Court for some reasons has not been charge-sheeted, the present petitioner for commission of offence punishable under Section 376 read with Section 511 of IPC, however, in the considered opinion of this Court, the allegations as levelled against the petitioner *prima facie* show that he had not only enticed away the minor prosecutrix from the lawful guardianship of her parents but had also made attempt to commit rape upon her. Even if it is assumed for the sake of argument that in her sworn deposition she has improved her version and has alleged that the petitioner had made forcible physical relations with her. Nonetheless, the allegations against the petitioner are serious in nature as not only he kidnapped the prosecutrix by inducing her on the pretext of performing marriage with him but also made an attempt to commit rape upon her. Keeping in view the nature of the allegations as levelled against him, the quantum of sentence which the victim may entail and the entire facts and circumstances of the case, I am of the considered opinion that the petition does not deserve to be given concession of bail. Therefore, the petition is dismissed.

8. However, this Court feels it proper to send a copy of this order to the learned trial Court for the purpose of consideration of the question as

to whether a case for framing charge under Section 376 read with Section 511 of IPC on the basis of allegations as levelled against the petitioner during the course of investigation or for framing charge under Section 376 of IPC on the basis of statement recorded by the prosecutrix in the Court, has been made out or not?

9. It is clarified that observations made hereinabove shall not be construed as an expression of opinion on the merits of the case.
10. Since the main case has been dismissed, pending application if any is rendered infructuous.

[MANISHA BATRA]
JUDGE

15th February, 2024
Parveen Sharma

1. Whether speaking/ reasoned : Yes / No
2. Whether reportable : Yes / No