

CRM-M-42236-2023 -1-

216 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-42236-2023
Date of decision: 12th March, 2024

Jaswinder Singh @ Rinku ...Petitioner(s)
Versus
State of Haryana ...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Shakti Mehta, Advocate for the petitioner.
Mr. Neeraj Poswal, A.A.G., Haryana.

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.	Date	Police Station	Sections
195	08.07.2021	Cheeka, District Kaithal, Haryana	363, 366-A, 376(3) and 506 (added later on) of Indian Penal Code, 1860 (for short 'IPC') and Section 4(2) (Added later on) of Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act')

2. The aforementioned FIR had been lodged on the basis of
complaint filed by the complainant 'S' (name withheld), father of the victim
'H' (name withheld) on 08.07.2021, alleging that the victim had left her

house on the intervening night of 7/8.7.2021 without informing anyone and he suspected that the present petitioner had enticed her away. During the course of investigation, the victim was recovered from bus stand, village Gajewas. Her statement under section 164 of Cr.P.C. was recorded, wherein she disclosed that she had left her house at her own accord but had gone to the house of the petitioner and insisted him to let her stay at his house and even both of them went to a lawyer for performing marriage but she being a minor, was not advised to do so. The victim was medically examined. Additional offences as mentioned above were incorporated. The petitioner was arrested on 11.07.2021 and is presently facing trial for commission of aforementioned offences. The petitioner had moved an application for grant of regular bail before the learned trial Court which had been dismissed vide order dated 02.08.2023.

3. The present petition has been filed by the petitioner on the grounds and it has been argued by his counsel that he has been falsely implicated in this case. No case for commission of offence of kidnapping or inducing the victim for the purpose of compelling her to perform marriage has been made out against him. As per her statement recorded under Section 164 of Cr.P.C., the victim had disclosed that she had left her home at her own accord and had not been taken away or enticed away or induced by the petitioner. It is also argued that no allegations of being ravished at the hands of the petitioner had been levelled by the prosecutrix in her statement recorded under Section 164 of Cr.P.C. and it is only after the pressure

exerted by her parents that she has improved her version while recording her statement in the Court and has implicated him for commission of offences punishable under Section 4 of POCSO Act and Section 376(3) of IPC. By further arguing that the petitioner is in custody for a period of more than two and half years, the trial is likely to take time and that no useful purpose would be served by keeping him in custody, it is argued that the petition deserves to be allowed.

4. On the other hand, it is submitted in the status report and it is argued by learned State counsel that many prosecution witnesses have been examined. Allegations against the petitioner are serious in nature. The semen detected on the salwar/swabs of the victim has matched with the DNA blood profiling of the victim. Her mother has also supported the version of the prosecution. There are chances of his fleeing, if extended benefit of bail. Even otherwise he has criminal antecedents and he was confined in custody in jail for commission of some other offences prior to lodging of FIR of the present case. It is, therefore, argued that the petitioner does not deserve to be given concession of bail.

5. I have heard learned counsel for the petitioner as well as learned State counsel at considerable length and have gone through the record carefully.

6. As per the allegations, the petitioner had enticed away the minor victim, had subjected her to penetrative sexual assault and had criminally intimidated her. As already mentioned, in her statement recorded

under Section 164 of Cr.P.C., the victim had disclosed that she had left her house at her own accord and out of fear of her father. Undoubtedly, to constitute the offence of kidnapping as defined under Section 361 of IPC, which is punishable under Section 363 of IPC, it is necessary for the prosecution to establish the element of taking away. The well settled proposition of law is also that the question whether there was 'taking' must be decided in 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 and the circumstances under which she felt it necessary and worthwhile to leave guardian's protection. In this case, though the petitioner is *prima faice* not shown to have played an active role in minor's leaving the custody of her lawful guardian as on the intervening night of 7/8.7.2021. But in her sworn deposition as recorded before the trial Court, she is shown to have stated that it was the petitioner who had come to her house on the fateful night and after taking her into his house had committed rape upon her. Therefore, it cannot be stated at this stage that the minor victim was not enticed away by the petitioner. So far as the allegations of her being ravished at his hands are concerned, her statement is recorded before the Court also shows that she had been subjected to the same by the petitioner. Being a minor her consent cannot be stated to be of any consequence. Keeping in view the gravity of the offences alleged to have been committed by the petitioner, the quantum of sentence which the conviction may entail and the attendant facts and circumstance of

the case, I am of the opinion that the petition does not deserve to be allowed.
Hence, the same is dismissed.

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

8. Since the main petition has been dismissed, pending application if any is rendered infructuous.

[MANISHA BATRA]
JUDGE

12th March, 2024

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