

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM-M No.45719 of 2023
Date of decision: 12.01.2024

PARVEEN
STATE OF HARYANA

.... Petitioner

Versus

.... Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present : Ms. Nidhi Garg, Advocate for petitioner.

Mr. Arjun Lakhanpal, Addl., A.G., Haryana.

MANISHA BATRA, J. (oral)

1. The present petition has been filed by the petitioner under Section 439 of Cr.P.C. for grant of regular bail in case bearing FIR No.710 dated 27.07.2022 registered under Sections 363, 366-A of IPC and later on added Sections 376(2)(n) of IPC and Section 6 of POCSO Act, at Police Station Sadar, District Karnal.
2. The facts relevant for the purpose of disposal of the present petition are that the aforementioned FIR was initially registered under Sections 363, 366-A of IPC on the basis of statement recorded by the complainant- 'S'(name withheld) alleging therein that on 27.07.2022, she had gone for her work while leaving her minor daughter-'P' (name withheld) at home. On coming back at home, her daughter was found missing. She alleged that on making inquiries, she had come to know she had been enticed away by the petitioner. The victim came to the Police Station along with the petitioner on 05.09.2022. Her statement was recorded under Section 161 of Cr.P.C. In her statement recorded under Section 164 of Cr.P.C., she stated that she had voluntarily gone with the petitioner. The medical examination of the petitioner

as well as the prosecutrix was conducted. Subsequently, offences under Section 376(2)(n) of IPC and Section 6 of POCSO, Act were added. The petitioner was arrested. After completion of necessary investigation and usual formalities, challan under Section 173 Cr.P.C was presented in the Court for trial of the petitioner and presently, he is facing trial.

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. The prosecutrix in her statement recorded under Section 164 of Cr.P.C., had stated that she had left her house as per her own Will and had not levelled any allegation of her being enticed away by the petitioner or being subjected to rape/aggravated penetrative sexual assault at his hands. The petitioner was in custody since 06.09.2022. The prosecutrix had already been examined. The trial was otherwise likely to take time as 19 witnesses were yet to be examined. The DNA report did not support the case of the prosecution. The prosecutrix had willingly accompanied him and hence, he argued that he deserves to be released on bail.

3. The petition has been resisted by the State in terms of the status report filed by it.

4. Per contra, learned State counsel argued that the allegations against the petitioner are serious and specific in nature. He enticed away a minor girl aged about 16 years and subjected her to rape. Her consent was immaterial. There was nothing to show that there would be any undue delay in conclusion of the trial. With these broad submissions, he has argued that the petition does not deserve to be allowed.

5. I have heard learned counsel for the parties and have gone through the material placed on record.

6. The petitioner is alleged to have kidnapped/abducted the minor victim on the pretext of performing marriage with her and is further alleged to have committed the acts of aggravated penetrative sexual assault/repeated rape upon her. The allegations against him are serious in nature. Though, in her statement recorded under Section 164 of Cr.P.C., the victim had stated that she had gone out at her own wish. However, it is well settled proposition of law that consent of a minor is no consent in the eyes of law. Moreso, in her sworn deposition recorded before the Court, she had supported the allegations of prosecution qua her being enticed away and ravished by the petitioner. There is nothing on record to show that the victim is a not minor. Keeping in view the nature of the allegations as levelled against the petitioner, the quantum of sentence which the conviction may entail and the attendant facts and circumstances, but without meaning to make any comment on the merits of the case, I am of the considered 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.

12.01.2024

Jyoti-IV

(MANISHA BATRA)
JUDGE

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