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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-46586-2023
Date of decision: 25th January, 2024

Mohammad Amin

...Petitioner(s)

Versus

State of Punjab

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Manish Puri, Advocate for the petitioner.

Mr. Parneet Singh Pandher, 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
162	02.09.2021	Shahpur Kandi, District Pathankot	363 and 366 of Indian Penal Code, 1860 (for short 'IPC') (section 120-B IPC added later on)

2. The aforementioned FIR was registered on the basis of statement recorded by the complainant Sheru Deen alleging that his eldest daughter had re-married and her daughter 'N' (name withheld) aged about 14 years had been residing with him, whereas his daughter had taken two of her other children with her. He complained that on the intervening night of 20/21.08.2021, his granddaughter had gone missing and had been enticed away by some unknown person. He also alleged that he had made search at his own level but could not find her.

On the basis of this complaint, initially a case under Sections 363 and 366 of IPC

was registered. Subsequently, on 29.03.2023, the complainant recorded a supplementary statement to the effect that he had come to know that the present petitioner and co-accused Faqir Mohammad who were his relatives had enticed away his grand-daughter and had got her marriage performed with one Shamir Ahmad Rathi after obtaining a sum of ₹ 2,50,000/-. On the basis of this supplementary statement, offence under Section 120-B of IPC was added. The petitioner and co-accused were joined into investigation as they were nominated as accused. The petitioner was arrested on 29.03.2023. He was interrogated and suffered a disclosure statement that he had entered into a conspiracy with the co-accused Faqir Mohammad who is his brother in-law and had taken the victim from the house of the complainant and had got her married to one Shamir Ahmad Rathi on 23.08.2021 for a sum of ₹2,50,000/- out of which an amount of ₹ 50,000/- was given to him which had been spent by him. After completion of necessary investigation and usual formalities, challan under Section 173 of Cr.P.C. is presented in the Court and presently, the petitioner alongwith co-accused is facing trial. Neither the victim nor the person with whom she was allegedly got married, however, could be recovered till date. The petitioner had filed an application for grant of bail before the learned trial Court which had been dismissed vide order dated 20.07.2023.

3. The present petition has been filed by the petitioner on the grounds and it is argued by his counsel that he has been falsely implicated in this case on the basis supplementary statement recorded by the complainant after a gap of more than one and half year from the date of registration of the FIR due to the reason that he had asked for some monetary help from the petitioner which the former could not do and feeling offended, he was got impleaded falsely by the complainant in this case. It is submitted that investigation has since been

completed. Challan has been presented and charges have been framed. Trial is likely to take time. No useful purpose would be served by keeping him in custody anymore. Infact, the grand- daughter of the complainant had performed marriage with one Shamir Ahmad Rathi and had been happily living with him. It is also submitted that the victim is twenty-one year old female. With these broad submissions, it is argued that the further detention of the petitioner is not required and he deserves to be given concession of bail.

5. The bail application has been resisted by learned State counsel in terms of status report. Learned State counsel has argued that there are serious allegations against the petitioner. He in connivance with the co-accused got enticed away the minor grand-daughter of the complainant by taking her to Kathua, Jammu and Kashmir. He got her married with one Shamir Ahmad Rathi after receiving a sum of ₹2,50,000/-. The material witnesses are yet to be examined. There are chances of his intimidating the witnesses. Therefore, it is argued that the petition does not deserve to be allowed.

6. I have heard learned counsel for the petitioner as well as learned State counsel and have gone through the record carefully.

7. The petitioner is alleged to have entered into a conspiracy with the co-accused Faqir Mohammad and in pursuance of the said conspiracy, he is alleged to have enticed away the grand-daughter of the complainant to Jammu and Kashmir and got her married to some Shamir Ahmad Rathi, for a sum of ₹2,50,000/-. In the original FIR which was lodged as on 02.09.2021, the complainant had not named the petitioner or the co-accused Faqir Mohammad and it is only after a gap of more than one and half year that he recorded a supplementary statement thereby implicating them and by saying that now he had come to know that the petitioner and co-accused had taken away his grand-

daughter and got her married. In the supplementary statement, there is, however, no mention as to from which source, he had received such information. It also does not appear from the record that any efforts are being made by the police or any fresh application/complaint had been moved by the complainant for tracing the victim. If the police has specific information that the victim was got married at Kathua, Jammu and Kashmir and with a specific person whose name has been disclosed by the complainant, then it should have been explained as to why she has not been tried to be recovered. The trial is likely to take time. The fact that the names of the petitioner and co-accused were taken by the complainant after a gap of more than one and a half year when his grand daughter had allegedly been enticed away by someone *prima facie* creates a doubt over the veracity of his version. There is no basis for the contention that he would intimidate the witnesses, if extended benefit of bail. He is in custody since 29.03.2023. Keeping in view the nature of subject offences, the period of incarceration of the petitioner, the fact that the trial is likely to take time and the attendant facts and circumstances of the case, I am of the considered opinion that the petitioner deserves to be released on bail at this stage. Hence, the petition is allowed, the petitioner is ordered to be released on bail subject to his furnishing personal as well as two surety bonds to the satisfaction of the Chief Judicial Magistrate/Duty Magistrate concerned.

8. However, at the same time, to elevate the *bonafide* apprehension raised by the prosecution, it is ordered that the petitioner will not enter into the vicinity wherein the complainant is residing, until the conclusion of the trial of the case, shall not intimidate or attempt to influence the complainant or any other material witness and shall not tamper with the evidence. The petitioner shall not leave India without the previous permission of the Court. In case of violation of

any of above condition, the jurisdictional Court concerned will be empowered to consider the application for cancellation of bail of the petitioner, if required and pass appropriate orders in accordance with law.

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 petition has been allowed, pending application(s), if any is rendered infructuous.

[MANISHA BATRA]
JUDGE

25th January, 2024
Parveen Sharma

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