

CRM-M-46427-2023 -1-

211 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-46427-2023
Date of decision: 16th February, 2024

Aslam ...Petitioner(s)
Versus
State of Haryana ...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. R.S. Dhull, 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.	Dated	Police Station	Sections
105	07.03.2023	City Sohna, District Gurugram	363, 366-A of Indian Penal Code, 1860 (for short 'IPC')

2. Brief facts of the case relevant for the purpose of disposal of this petition are that the aforementioned FIR was registered on 07.03.2023 on the basis of a written complaint filed by the complainant 'D' (name withheld) alleging therein that on the same evening at about 4:00 PM, he alongwith his wife and daughter 'N' (name withheld) had come to the

market of Sohna to make some purchases and while, his wife and himself were busy in shopping, they found their daughter to be missing. While making search for her, they reached near Ambedkar Chowk and found that some youths had caught hold of his daughter as well as the petitioner Aslam. One of those youths namely Sanjay informed him that they had apprehended the petitioner and 'N' (name withheld) on raising suspicion. He alleged that the petitioner was taking away his daughter by enticing her and kidnapping her for the purpose of conversion of her religion, with him. A case under Sections 363 and 366-A of IPC was registered. Investigation proceedings were initiated. The statement of the victim was recorded under Section 164 of Cr.P.C. wherein she stated that she knew the petitioner from the last seven months and he had come from Surat to the Sohna Market as he knew that she would be going there and it was with her own wish that she was going towards Surat with him and wanted to marry him but was caught hold by her parents and others. The petitioner was interrogated and suffered disclosure statement admitting his involvement in the crime of enticing away the victim and taking her alongwith him with the intent to marry with him. After completion of necessary investigation and usual formalities challan under Section 173 Cr.P.C. was presented in the Court and presently the petitioner is facing trial for aforementioned offences. He had filed an application for grant of bail before the learned trial Court but the same has been dismissed vide order dated 06.07.2023.

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. He is in custody since 08.03.2023. The victim had been voluntarily accompanying him and even in her statement recorded under Section 164 of Cr.P.C. she had claimed that she was neither enticed away nor kidnapped by him and was voluntarily going with him. Trial is likely to take time. Therefore, it is argued that he deserves to be concession of bail.

4. Learned State counsel has filed status report. It is argued that the petitioner had suffered disclosure statement during the course of investigation admitting his involvement in the subject crime. The allegations against him were serious in nature as he had induced a minor girl of about fifteen and half years of age who left lawful guardianship of her parents to come with him so as she could be induced to either perform marriage with him or for some other illegal purpose. Learned State counsel has further 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. The allegations against the petitioner are that he kidnapped the minor-victim from the lawful guardianship of her parents as on 07.03.2023 and the kidnapping of the victim by him was by way of inducement made by her for performing marriage with her or with the intent of forcing or seducing her to illicit intercourse with some other person or with himself.

The victim being born on 03.07.2006 is obviously a minor who was even below the age of sixteen years at the relevant time. The fact that she in her statement recorded under Section 164 of Cr.P.C, she had stated that she was going with the petitioner out of her own will, cannot be stated to be of any importance for the purpose of extending benefit of bail to the petitioner, in view of the fact that the well settled proposition of law is that to constitute the offence of kidnapping, it is necessary to establish the element of taking away and the question that whether there has been 'taking' has to be decided with reference to several circumstances including the question whether the girl was of sufficient maturity and intellectual capacity to think for herself and make up her own mind. The person leaving custody of lawful guardian should be of the age of discretion while leaving the house of his/her parent of own accord, in order to exonerate the accused from the charge of offence of kidnapping. However, keeping in view, the age of the victim in this case, it cannot be stated that she was having sufficient maturity of mind and intellectual capacity to think for herself and to assume the consequences of the act which she was going to commit as per the allurements given by the petitioner. The trial has commenced and there is nothing on record to show that there would be any undue delay in conclusion of the same. Keeping in view the serious nature of offence alleged to have been committed by the petitioner, the question of sentence that the conviction may entail and the attendant facts and circumstances of the case, I am of the considered opinion that he does not deserve to be given concession of bail. Accordingly, the

petition 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

16th February, 2024

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