

Neutral Citation No. 2024:PHHC:032695

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

206

CRM-M-47997-2023 (O&M)

Date of decision: 06.03.2024

Yuvraj Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Gobind Singh Randhawa, Advocate
for the petitioner.

Ms. Ruchika Sabherwal, Sr. DAG, Punjab.

MANISHA BATRA, J. (Oral)

1. The petitioner, who is a minor, has filed the present petition under Section 438 Cr.P.C. for grant of anticipatory bail in FIR No. 62 dated 13.08.2023, registered under Sections 363 and 366-A of IPC at Police Station Balachaur, District Shaheed Bhagat Singh Nagar.

2. Brief facts of the case relevant for the purpose of disposal of this petition are that the aforementioned FIR has been registered on the basis of the statement recorded by the complainant 'S' (*name withheld*), who is father of the minor victim 'D' (*name withheld*), alleging therein that on 12.08.2023 at about 06:00 PM, his wife and himself had gone somewhere, while leaving the victim and his ailing father at home. At about 11:00 PM, when they came back, they found the victim to be missing. He suspected that she had been enticed away by some unknown person on the pretext of marrying her. After registration of the FIR, investigation proceedings were initiated and the same are going on. On 16.04.2023, the victim was found in the market of Balachaur

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and was taken in the custody of the police. She was taken to Civil Hospital, Balachaur for her medical examination. Her statement under Section 164 Cr.P.C. was recorded, wherein she stated that she was in contact with the petitioner through social media for the last three years and on the night of 12.08.2023, she had gone along with him to Chandigarh without telling anybody. They had stayed in a hotel at Hallomajra in the night. She further stated that the petitioner had again brought her to Chandigarh, wherein they stayed for two days and thereafter, she was left by the petitioner at the bus stand at Balachaur on 15.08.2023. She also stated that the petitioner had taken her with him by alluring her on the pretext of performing marriage with her. The petitioner had filed an application for grant of anticipatory bail before the Additional Sessions Judge, S.B.S. Nagar but the same had been dismissed.

3. The present petition has been filed by the petitioner on the grounds and it has been argued by his counsel that he has falsely been implicated in this case. He was 17 years and 08 months' old at the time of incident and was a minor. The ingredients for commission of offences punishable under Sections 363 and 366-A of IPC were not made out against him at all, since as per the version of the victim herself, she had left her house on her own and had accompanied him. His custodial interrogation is not required. He is ready to join the investigation. No recovery is to be effected from him. It is also submitted that despite the fact that the petitioner is a juvenile, the present petition is still maintainable. Therefore, it is argued that the present petition deserves to be allowed and the petitioner deserves to given benefit of pre-arrest bail.

4. Status report has been filed by the respondent-State, wherein it is submitted that in her statement recorded under Section 164 Cr.P.C., the victim has categorically stated that she had been taken away by the petitioner on the pretext of performing marriage with her. Learned State counsel has argued that the present petition is not maintainable in view of the settled position of law that a juvenile cannot file a petition under Section 438 Cr.P.C. seeking anticipatory bail and the remedy available to him is to approach the Juvenile Justice Board. Therefore, it is urged that the present petition is liable to be dismissed.

5. I have heard learned counsel for the parties at considerable length and have also gone through the material placed on record carefully.

6. So far as the argument as to the maintainability of the present petition is concerned, the petitioner has claimed himself to be a juvenile at the time when the occurrence had taken place and in the status report, the respondent-State has not controverted this fact. Meaning thereby, there is no dispute about the fact that the petitioner is a juvenile. Recently a Division Bench of High Court of Allahabad in case cited as ***Mohammad Zaid vs. State of U. P. and another*** and in connected appeals, reported as ***2023 SCC Online (All.) 230***, had discussed this question and had observed that “child” or “child in conflict with law” as per the Juvenile Justice (Care and Protection of Children) Act, 2015 can file an application for anticipatory bail under Section 438 Cr.P.C. and the same would be maintainable. It was also held that since there is no bar under Section 438 Cr.P.C. restricting its application insofar as a child in conflict with law is concerned, the same would be fully applicable. The Division Bench further observed that since there was no bar

on applicability of Section 438 Cr.P.C., the same would thus be applicable to a child in conflict with law as he cannot be left remedy-less till the time of his apprehension by the concerned authority or arrest whatever the case may be. It is relevant to mention here that the above discussions were made by the Division Bench in response to a reference, which was made by the Bench of a Single Judge of that High Court. In view of the above ratio of law as laid in the afore-cited judgment, it is held that the prayer for grant of pre-arrest bail as made by the petitioner cannot be declined on the ground of non-maintainability.

7. Now coming to the contentions as raised by both the parties. The victim in this case was a 15 years' old girl, when she had left her house and had joined the company of the petitioner. Undoubtedly, in her statement recorded under Section 164 Cr.P.C., she had stated that she had left her parental house on her own on the night of 12.08.2023 and had gone to Chandigarh along with the petitioner and had stayed with him in a hotel. Though, the petitioner is not alleged to have played any active part immediately prior to the victim's leaving her house. However, she was only 15 years of age. In case of a minor, who is of the age of discretion and leaves the house of her parents of her own accord and goes with the accused, the accused cannot be charged with the offence of kidnapping as there is a distinction between "taking" and allowing the minor to accompany a person. However, the victim, being only 15 years of age, cannot be stated to be having sufficient maturity or being capable of exercising discretion. It cannot be assumed that she knew the full import of what she has been doing at the time when she had left her house as on the date of incident. As such, the part

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played by the petitioner in taking the victim along with him to Chandigarh and making her stay with him can certainly be stated to be an act of enticing her away as the victim was not of the age of sufficient maturity and intellectual capacity of understanding the consequences of her actions. In her statement recorded under Section 164 Cr.P.C., she has also stated that she had been induced by the petitioner on the pretext of performing marriage with her.

8. In view of the discussion as made above, I am of the considered opinion that no such extraordinary or sparing circumstance has been made out in this case, which warrants exercise of powers under Section 438 Cr.P.C., which are to be exercised in extraordinary and sparing circumstance. It is also to be seen by the Court that an order of anticipatory bail should not operate as an inroad in the legal procedure of criminal cases by the trial Court. The anticipatory bail should not be granted lightly and in a routine manner.

9. In the light of the aforesaid reasons and without commenting further on merits, lest it may prejudice the case of either side during the course of trial of the main case, as there is no merit, therefore, the instant petition for pre-arrest bail filed by the petitioner is hereby dismissed as such in the obtaining circumstances of the case.

10. Needless to mention that nothing observed, hereinabove, would reflect, on the merits of the case, in any manner as the same has been recorded for the limited purpose of deciding the present petition for anticipatory bail.

06.03.2024
Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes