



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

205

CRM-M-48276-2024
Date of Decision: 01.10.2024

Deepak Kumar @ Dipak MohaldarPetitioner

Versus

State of Punjab Respondent

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: - Mr. Navraj Singh Mahal, Advocate for the petitioner.

Ms. Guramrit Kaur, DAG, Punjab.

NIDHI GUPTA, J. (ORAL)

The petitioner has filed the present 1st petition under Section 483 of B.N.S.S. 2023 for grant of regular bail to the petitioner in case/FIR No.27 dated 22.02.2023 (Annexure P-1) registered under Sections 363, 366 IPC, 1860 (Section 376(3) of IPC and Section 6 of POCSO Act, 2012 has been added later on) at Police Station Kartarpur, Jalandhar (Rural), Punjab.

Learned counsel for the petitioner *inter alia* submits that the present FIR (Annexure P-1) has been registered on the basis of the statement of the father of the victim and reads as follows:

“To, SHO P.S. Kartarpur, District Jalandhar. Sir, it is requested that I, Anil Kumar Paswan son of Jogi Paswan, resident of Navtol, Bishnupur, District Madhopura, Police Station Murliganj, Bihar, presently residing at tube-well of Pamma, resident of Sarai Khas, where I along with my wife Heera Devi along with four children of which three sons and one daughter are residing. Eldest one is a son and younger



to him is XXXX, who is aged about 12-13 years and two sons are younger than her. We, entire family, are doing labour work. On the night of 10.02.2023, my daughter XXXXX had gone somewhere without informing and asking us. Later on, we came to know Deepak son of Santokh Maldar, resident of Bengal, who along with his parents and brothers, is residing on the motor existing ahead of our motor, the owner of which is Bindar resident of Tahli Sahib, who allured her and has eloped with her. Kindly search for our daughter be made. Sd/ Anil Kumar Paswan mobile NO. 8689730750.”

It is submitted that the daughter of the complainant had gone missing on 10.02.2023. However, FIR has been registered 12 days thereafter on 22.02.2023, ostensibly, as the complainant came to now that the petitioner had allured the victim and eloped with her. It is submitted that as per the ossification test of the victim, she was around 17-19 years of age at the time of occurrence i.e. 10.02.2023, whereas the petitioner was about 21 years of age. Moreover the victim in her testimony as PW3; complainant in his testimony as PW1; and mother of the victim in her testimony as PW2 have turned hostile and not supported the prosecution case.

Learned counsel for the petitioner submits that the petitioner has been in custody since 10.04.2024 as undertrial. No useful purpose would be served by further detention of the petitioner in custody. Thus, it is prayed that the present petition may be allowed and the petitioner be released on regular bail.

Learned counsel for the State vehemently opposes prayer made on behalf of the petitioner; however on instructions from ASI Manjit Singh, admits that the victim in her statement under Section 164



Cr.P.C. has not supported the prosecution case and has stated that she has willingly gone with the petitioner; that the complainant used to beat her; and that is why she wanted to go far away from home. The victim has further stated in her statement under Section 164 Cr.P.C. that she has performed marriage with the petitioner. It is informed that the victim was recovered on 09.04.2024 from Dana Mandi Sarai Jalandhar alongwith 4-months-old boy child. It is stated that DNA in respect of the paternity of the child is awaited.

Learned counsel for the State, further informs that there are 28 witnesses in the present case, out of which only 7 witnesses including the material witnesses, have been examined so far.

Learned counsel for the State files custody certificate dated 29.09.2024, which is taken on record, as per which the petitioner has been in custody as an undertrial for a period of 5 months and 18 days.

Having heard learned counsel for the parties, but without commenting on merits of the case, however, keeping in view the totality of the facts and circumstances of the case including: a) the custody period of 5 months and 18 days undergone by the petitioner as an undertrial; b) no other case is pending against the petitioner as evident from the custody certificate placed on record; c) material witnesses already stand examined; and d) out of total 28 witnesses, 7 witnesses have been examined so far and, therefore, the conclusion of trial will take considerable time and no useful purpose would be served by further detention of the petitioner. Thus, the present petition is **allowed**.

The petitioner-Deepak Kumar @ Dipak Mohaldar s/o



Santokh Maldar @ Santosh Mohaldas, is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Chief Judicial Magistrate/Duty Magistrate, concerned.

However, it is made clear that nothing stated above shall be construed as an expression of opinion on the merits of the case.

01.10.2024
Divyanshi

(NIDHI GUPTA)
JUDGE

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