

CRM-M-53209-2023 -1-

219 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-53209-2023
Date of decision: 5th March, 2024

Deepak Kumar ...Petitioner(s)

Versus

State of Punjab ...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. G.S. Brar, Advocate for the petitioner.
Mr. A.S. Samra, 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.	Police Station	Sections
18	Mullanpur, Garibdas, District SAS Nagar (Mohali)	363, 366A and 376 of Indian Penal Code, 1860 (for short ‘IPC’) and Section 6 of Protection of Children from Sexual Offences Act, 2012 (for short ‘POCSO Act’)

2. Brief facts of the case relevant for the purpose of disposal of present petition are that the abovesaid FIR has been registered on the basis of statement recorded by the complainant ‘A’ (name withheld) on 08.02.2023 alleging therein that the victim ‘V’ (name withheld) who is his minor daughter had gone missing from the house on the intervening night of

07/08.02.2023. He had made search for her but could not find her. He raised suspicion that she had been enticed away by some unknown person. Initially, a case under Sections 363 and 366-A of IPC was registered. Investigation proceedings were initiated. During investigation, the victim was recovered from the custody of the present petitioner on 01.03.2023. The petitioner was arrested. The victim refused to get her medical examination conducted. Her statement under Section 164 of Cr.P.C. was recorded on 02.03.2023, before the learned Judicial Magistrate 1st Class, Kharar, wherein she stated that she had gone with the petitioner as per her own will and had also got married with him at Delhi. They had stayed together. She was found pregnant at that time. Her parents got her admitted in the hospital and her pregnancy was got terminated. The blood samples of the present petitioner as well as of the aborted fetus in the womb of the victim were sent for DNA profiling. Offences under Sections 376 and 366 of IPC and Section 6 of POCSO Act were also added. After completion of necessary investigation and usual formalities, challan was presented in the Court and presently the petitioner is facing trial for the commission of the abovementioned offences. He had moved an application for grant of regular bail before the learned trial Court which has been dismissed vide order dated 30.09.2023.

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. It is not a case of kidnapping/abduction of the

prosecutrix as the prosecutrix in her statement recorded under Section 164 of Cr.P.C., had herself stated that she left her parental home at her own will and had got married with the petitioner as per her wish and had voluntarily stayed with him. He is in custody for a period of more than one year. Since the victim has been examined, there are no chances of his intimidating the witnesses. Trial is likely to take time. Therefore, it is argued that the petitioner deserves to be given concession of bail. In support of his arguments, he has placed reliance upon the authority cited as '*Lakhan Vs. State of Haryana, 2022(3)Law herald 2332*' wherein co-ordinate Bench of this Court has extended benefit of regular bail to the petitioner, who was also accused of similar offence as in the present case.

4. On the other hand, learned State counsel has vehemently resisted the claim of the petitioner by arguing that the allegations against the petitioner are serious in nature. The DNA report is awaited. The consent of the victim who was minor at the relevant time is of no consequence. It also stands proved on record that the petitioner had subjected the victim to the acts of aggravated penetrative sexual assault and she had even become pregnant. Being a minor, her consent in this regard was also not material. There is nothing on record to show that there would be any undue delay in conclusion of the trial. Hence, it is urged that the petition does not deserve to be allowed.

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 petitioner is alleged to have enticed away the victim out of lawful guardianship of her parents, as on the intervening night of 07/08.02.2023 with intent to perform marriage with her or to subject her to sexual intercourse. It is further alleged that the petitioner has subjected her to act of aggravated penetrative sexual assault on the pretext of performing marriage with her. No doubt, in her statement recorded under Section 164 of Cr.P.C., the victim who was a fifteen years old girl at the relevant time had stated that she had voluntarily left her home and had gone with the petitioner, but she cannot be stated to have attained the age of sufficient maturity or understanding at that time, so as to infer that she was not enticed away and had voluntarily accompanied the petitioner. Even otherwise, the consent of the victim, she being a minor either to the act of sexual intercourse being committed upon her or her accompanying the petitioner cannot be stated to be of any relevance. Moreso, in her sworn deposition as recorded before the learned trial Court, the prosecutrix is shown to have stated that the petitioner had forcibly subjected her to maintain physical relations with her without her consent due to which she had become pregnant. Taking into consideration the grave nature of the allegations as levelled against the petitioner, the quantum of sentence which the conviction may entail and the attendant facts and circumstances of the case, I am of the

considered opinion that the petition does not deserve to be allowed. Hence, the same is dismissed. The authorities cited by the petitioner’s counsel cannot be stated to be applicable due to difference in peculiar facts of this case and as such no reliance can be placed upon the same.

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

5th March, 2024

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