

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

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CRM-M-59068-2022 (O&M)
Date of decision: 16.02.2024

Amar Pal ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. B. S. Bhalla, Advocate
for the petitioner.

Mr. Satjot Singh, AAG, Punjab.

MANISHA BATRA, J. (Oral)

1. This petition has been filed by the petitioner under Section 439 Cr.P.C. seeking regular bail in case bearing FIR No. 84 dated 09.07.2020, registered under Sections 363 and 366 of IPC at Police Station Mehtiana, District Hoshiarpur.
2. Brief facts of the case relevant for the purpose of disposal of this petition are that on 09.07.2020, the complainant 'G' (*name withheld*) reached police station and recorded his statement to the effect that the victim 'S' (*name withheld*), who was her 13-14 years' old daughter, had gone missing from their house w.e.f. 13.06.2020. He had been making inquiries about her and had not been able to trace her. Now he had come to know that accused

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Amar Pal, who is husband of his eldest daughter, had enticed away the victim. On the basis of this statement, initially a case under Sections 363 and 366 of IPC was registered. Investigation proceedings were initiated. The petitioner was apprehended on 21.07.2022. The victim was recovered from his custody. Her statement under Section 164 of Cr.P.C. was got recorded before the Magistrate, wherein she stated that her eldest sister used to harass the petitioner and keep him unhappy, whereas a love relationship had been developed between him and herself and because of that fact, she had run away from her house with the petitioner out of her own will. She also stated that she had solemnized marriage with the petitioner and wanted to reside 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 commission of the aforementioned offences. He had moved an application for grant of regular bail before the trial Court but the same was dismissed, vide order dated 12.10.2022.

3. The present petition has been filed by the petitioner on the grounds and his counsel has argued that he has been falsely implicated in this case. There is delay of 09 days in lodging of the FIR. In fact, the relationship between the petitioner and his wife was not good and there were matrimonial disputes and she had left the matrimonial house and had gone to parental house. The relationship between the petitioner and the victim was not approved of by her family members and the victim was given frequent beatings by her family members and they wanted to get her married somewhere else, due to which, out of her own will and accord, she had left her parental home. It is also submitted that they had also filed a petition seeking

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protection of their lives and liberty at the hands of the complainant on 23.07.2021 in High Court of Allahabad. It is also submitted that no case for commission of offences punishable under Section 363 and 366 of IPC has been made against the petitioner. The victim was not minor and in fact she was major. In her sworn deposition, she has not supported the prosecution version. Even her father i.e. the complainant has admitted that the victim had left her house at her own and he is not also sure about the date of birth of the victim to prove that she was a minor at the time of incident. With these broad submissions, it is prayed that the present petition deserves to be allowed.

4. Status report has been filed by the respondent-State, as per which, there are serious allegations against the petitioner, who had taken away her own minor sister-in-law by alluring her and, therefore, it is argued that he does not deserve to be given benefit of regular bail.

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

6. The petitioner is alleged to have enticed/taken away the victim, who was claimed to be the age of 13-14 years as on the date of incident i.e. 13.06.2020. In her sworn deposition recorded in the Court on 31.01.2024, she has, however, claimed herself to be 23 years' old. A perusal of her statement reveals that she had categorically deposed that she was not enticed away by the petitioner nor she was kidnapped by him and the FIR by her father was got registered under some misconception as she was not a minor in the year 2020. This witness was declared to be hostile on the request of learned public prosecutor and was allowed to be cross-examined by him. However, she has maintained stand that she was not a minor at the time of incident and further

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that she had gone out of her own free will with the petitioner. Though, it is admitted by her that in her statement as recorded under Section 164 of Cr.P.C., she had mentioned that she was 15-16 years' old but at the same time, she denied that she was minor at the time of incident and stated that she was born on 01.01.2001 as shown in her Aadhar Card, Ex. D-1. Learned counsel for the petitioner has also placed on record a copy of statement recorded by the complainant before the trial Court on 16.10.2023 and a perusal of the same reveals that he has made self contradictory statement as on the one hand he stated that the victim was forcibly taken away by the petitioner on 30.06.2020 but at the next breath, he is shown to have stated that she had left the house alone on her own. He admitted that the petitioner had disputes with his eldest daughter, with whom he was married. Though, it is shown that it was denied by him that the victim was major but at the same time, it is also his version that he was not having any birth certificate of the victim. Different claims as to the age of the victim are being made. It has also come on record that while recording her sworn deposition in the Court, the victim claimed herself to be 23 years' old. For the purpose of proving commission of kidnapping, the prosecution is required to establish the element of 'taking' away of the victim. However, it is well settled law that where the prosecutrix leaves her father's house at her own accord and willingly accompanies the accused, the part played by the accused can be regarded as facilitating the fulfillment of the desire of the prosecutrix and it falls short of an inducement to the prosecutrix to slip out of the custody of her lawful guardians and does not tantamount to 'taking' within the meaning of kidnapping under Section 361 of IPC. In the instant case, not only in her statement recorded under Section 164 of Cr.P.C.,

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the victim is shown to have clearly stated that she had left her parental house voluntarily and out of her own free will and accord and also stated that she was in love with the petitioner, due to which, objections were being raised by her family members and that she wanted to stay with the petitioner. The factum as to the age of the victim is itself in question and as such, it is to be assumed that she was of the age of discretion when she left her parental house voluntarily. It has also become a debatable question as to whether the petitioner had committed the offence of kidnapping or not and accordingly, it is also debatable as to whether the offence punishable under Section 366 of IPC has been committed by the petitioner or not.

7. Undoubtedly, the consent of a minor is not of any consequence but when the age of the victim itself is in question, then, the fact that the statements made by her during the stage of investigation as well as trial do not make out a case that she had been forcibly taken by the petitioner with intention of committing illicit intercourse or compelling her to marry against her will. As such, keeping in view the fact that in her sworn deposition as well as in her statement recorded under Section 164 of Cr.P.C., the victim has not supported the version of the prosecution coupled with the fact that the petitioner is in custody since 21.07.2022 and the evidence produced with regard to age of the victim is inconsistent and further keeping in view the entire facts and circumstances of the case, this Court is of the considered opinion that the petitioner deserves to be given benefit of regular bail.

8. Accordingly, the present petition is allowed. The petitioner is ordered to be released on regular bail, subject to his furnishing personal/surety bonds to the satisfaction of the trial Court/Duty Magistrate, concerned.

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9. It is made clear that any observation made herein above is only for the purpose of deciding the present petition and the same shall have no bearing on the merits of the case.

16.02.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

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