

CRM-M-56368-2023 -1-

290 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-56368-2023
Date of decision: 1st March, 2024

Sagar Kumar
...Petitioner(s)
Versus
State of Punjab
...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. C.S. Rana, Advocate for the petitioner.
Mr. Satjot Singh, AAG, Punjab.

MANISHA BATRA, J (ORAL):-

The present petition has been filed under Section 438 of Cr.P.C.
seeking anticipatory bail in FIR mentioned below:-

FIR No.	Dated	Police Station	Sections
107	05.11.2022	City, Morinda, District Rupnagar	346 of Indian Penal Code, 1860 (for short 'IPC') and Sections 365/366/511 and 376-D of IPC added later on

2. As per allegations, the prosecutrix who is nineteen years old daughter of the complainant had been abducted by the petitioner with the help of the co-accused on 01.11.2022 with an intent to compel her to marry the petitioner and in order to force or seduce her to illicit intercourse. She had also been extended threats and was subjected to rape by the present petitioner. As per the further version of the prosecution, on 07.12.2022, the

father of the prosecutrix i.e. the complainant had informed the police that the victim was present in her ancestral village at Bihar and he was going to bring her and then on 09.12.2022, she was produced before the police and had also recorded her statement under Section 164 of Cr.P.C. before the concerned Magistrate. Copy of her statement as recorded under Section 164 of Cr.P.C. has been placed on record which shows that she had levelled allegations that she was forcibly taken to Bihar by the present petitioner and one of his friends who was unknown to her as on 01.11.2022 and then was taken twice to Nepal and had also been kept confined in a village in Bihar and she had managed to flee when she had heard the conversation between the petitioner and the some other boys that they were intended her trafficking. She also disclosed that she was ravished by the petitioner.

3. The present petition has been filed by the petitioner seeking pre-arrest bail and it has been argued by his counsel that infact he was having love affair with the daughter of the complainant. She had left her parental home out of her own will and had joined his company. They had gone to Nepal where they had performed marriage and had stayed as husband and wife. Since the parents of the prosecutrix were against their matrimonial alliance, he was falsely implicated. Therefore, it is urged that the petitioner deserves to be concession of pre-arrest bail.

4. The respondent-State has filed reply alleging that there are specific allegations against the petitioner. Thorough investigation is required to be conducted in the matter as the prosecutrix was being taken by the petitioner and other accused to Nepal twice and was subjected to rape by the

petitioner. Therefore, it is argued 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. Certain photographs of the petitioner and the prosecutrix have been placed on record by learned counsel for the petitioner which show them to be very comfortable with each other. In one of such photographs, the prosecutrix is even shown to have put vermilion in her hair to show that she was a married woman. The prosecutrix remained in the company of the petitioner for over a period of one month. She is major. It is a debatable question as to whether, it was a case of abduction to compel the victim to marry the petitioner and her being ravished at his hands or it was a case of consent? It is also a debatable question that the petitioner was subjected to gang rape because even in her statement recorded under Section 164 of Cr.P.C., she did not state so. The fact is that the prosecutrix is not shown to have made any efforts whatsoever during the period of one month of her stay with the petitioner to flee from his confinement, if she in fact had been taken away forcibly by him. Keeping in view the entire facts and circumstances, I am of the considered opinion that it is a case where powers under Section 438 of Cr.P.C. are required to be exercised. Therefore, the petition is allowed and the petitioner is ordered to be extended benefit of anticipatory bail subject to his surrendering before the Investigating Officer within a period of one week and thereafter, as and when required and on fulfilling the

following conditions:-

- (i) the petitioner shall cooperate with the investigating officer and shall appear before him as and when required.
- (ii) he shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to any Police Officer.
- (iii) he shall not commit any similar offence while on bail.

7. In case of violation of any of the above conditions, the jurisdictional Court shall be empowered to consider the application for cancellation, if any, and pass appropriate orders in accordance with law.
8. It is clarified that observations made hereinabove shall not be construed as an expression of opinion on the merits of the case.

[MANISHA BATRA]
JUDGE

1st March, 2024
Parveen Sharma

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| 1. Whether speaking/ reasoned | : | Yes / No |
| 2. Whether reportable | : | Yes / No |