

220 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-58668-2023
Date of decision: 19th March, 2024

Harjit Singh @ Raja

...Petitioner(s)

Versus

State of Punjab and another

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Karan Choudhary, Advocate for the petitioner.
Mr. Satjot Singh, 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.	Date	Police Station	Sections
168	14.08.2023	Mukerian, District Hoshiarpur	346, 363, 366-A and 120-B of Indian Penal Code, 1860 (for short ‘IPC’)

2. Brief facts of the case relevant for the purpose of disposal of this petition are that the aforementioned FIR was registered on the basis of statement recorded by the prosecutrix ‘R’ (name withheld) on 14.08.2023 alleging therein that her younger daughter ‘J’ (name withheld) i.e. the victim had been found missing from her house in the morning of 14.08.2023. They had tried to search for her but could not find her. On the basis of her complaint, initially a case under Section 346 of IPC was registered. Investigation proceedings were initiated. On 28.08.2023, a supplementary

statement was recorded by the complainant stating that her daughter had been enticed away by the present petitioner in connivance with his parents and had been induced on the pretext of performing marriage with her. She alleged that in the month of February, 2023 also the petitioner had taken her away. Offences under Sections 363, 366-A read with Section 120-B of IPC were added. In the meanwhile, the petitioner and the prosecutrix had filed a petition seeking protection of life and liberty before this High Court by filing CRWP-8450-2023. Vide order dated 28.08.2023, custody of the petitioner was handed over to the police, whereas the minor victim was directed to be kept in Aashiana Home as she did not want to go with her parents. Her statement under Section 164 of Cr.P.C. was recorded. She refused to get her medico legal examination conducted. Co-accused were joined into investigation and had been extended benefit of anticipatory bail. After completion of necessary investigation and usual formalities, challan was presented and presently, the petitioner alongwith the co-accused is facing trial for commission of aforementioned offences.

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. He is in custody since 06.09.2023. Investigation has since been completed. Trial is likely to take time. His further detention would not serve any useful purpose. The victim herself had stated that she had left her parental home as per her own wish. The ingredients for commission of offences punishable under Sections 363 and 366-A of IPC were not at all made out as against him. Therefore, it is argued that the

petitioner deserves to be concession of bail.

4. The respondent-State has filed reply submitting therein that the petitioner had enticed away the minor prosecutrix by taking her out of her lawful guardianship on the pretext of performing marriage with her. The allegations against him are serious in nature. The material witnesses are yet to be examined. There are chances of petitioner's intimidating the witnesses, fleeing or thwarting the course of justice and 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. The petitioner is alleged to have enticed away the daughter of the complainant as on 14.08.2023 on the pretext of performing marriage with her. In her statement recorded under Section 164 of Cr.P.C., the prosecutrix is shown to have stated that she did not want to go with her parents and live with them. She has even refused to get her medical examination conducted. Her statement as recorded under Section 164 Cr.P.C. points out that she had voluntarily left her house. In the complaint her father has disclosed her age to be 16 years meaning thereby that she was at the age of the discretion. It is well settled proposition of law that where the minor is of the age of discretion and leaves the house of her parents on her own accord and goes with the accused, he cannot be charged with the offence of kidnapping. It will be proved on the basis of evidence produced on record that the victim had left her parental house on any inducement made by the petitioner or at

her own when the prosecutrix willingly accompanies an accused, the part played by the accused then can be regarded as facilitating the fulfillment of the desire of the prosecutrix and it falls short of an inducement to her to take her out of custody of her lawful guardian and does not tantamount to “taking” within the meaning of definition of kidnapping under Section 361 of IPC. Moreso, at this stage, there is nothing on record to show that the petitioner had induced the victim to go with her with intention or with knowledge that she will be forced or seduced to illicit inter-course or she was forced to do so. The petitioner is in custody since 06.09.2023. Investigation has completed. Trial is likely to take time. In view of the discussion as made above and keeping in view the facts and circumstances of the case, I am of the considered opinion that the petitioner deserves to be given concession of bail. Hence, the petition is allowed, the petitioner is ordered to be released on bail subject to his furnishing personal/surety bonds to the satisfaction of the Chief Judicial Magistrate/ Duty Magistrate concerned.

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 allowed, pending application if any is rendered infructuous.

[MANISHA BATRA]
JUDGE

19th March, 2024
Parveen Sharma

1. Whether speaking/ reasoned

:

Yes / No
2. Whether reportable

:

Yes / No