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IN THE HIGH COURT OF PUNJAB & HARYANA

AT CHANDIGARH

CRM-M-59632-2023

Date of decision: 31st January, 2024

Oma Singh

...Petitioner(s)

Versus

State of Punjab

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Sachin Ohri, Advocate for the petitioner.
Mr. Parneet Singh Pandher, AAG, Punjab.
Mr. Sham Lal Saha, Advocate for the complainant.

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.	Dated	Police Station	Sections
63	06.10.2023	Bhaini Mian Khan, District Gurdaspur	363 and 366 of Indian Penal Code, 1860 (for short 'the Act')

2. Brief facts of the case relevant for the purpose of disposal of this petition are that the complainant ‘N’ (name withheld) recorded his statement on 06.10.2023 alleging therein that his younger daughter ‘A’ (name withheld) who was sixteen and half years old, had gone to a shop in the village to purchase some articles on 15.08.2023 at about 3:30PM, but did not return home. He had made search for her and had come to know that she was taken away by the petitioner on the pretext of performing marriage with him. He filed a petition before the High Court and got custody of his

daughter. On the basis of his statement, a case was registered against the present petitioner. Investigating proceedings were initiated. The petitioner was arrested on 06.10.2023. The petitioner filed a petition for grant of bail before the learned Additional Sessions Judge, Gurdaspur but the same was dismissed vide order dated 10.11.2023.

3. The present petition has been filed by the petitioner on the ground and it has been argued by his counsel that he has been falsely implicated in this case. Infact, there is a love affair between the prosecutrix and himself and the complainant who is father of the prosecutrix is against their relationship and he himself being involved in NDPS cases and wants her to get marry with a boy who is also indulged in taking intoxicating substances. He has argued that it was with her own consent and in order to safe herself that the prosecutrix had left her home alone as per her own wish and had met the petitioner and while representing her as major, she had called upon him to get married with her. They had got married with each other as per their own free will, consent and had even filed a petition for protection of their life and liberty from the complainant and his family members. It is submitted that after appearance of father of the prosecutrix before the Court, it had come to the knowledge of the petitioner that she had not completed the age of eighteen years. It is submitted that the custody of the prosecutrix was handed over by the High Court in a petition filed by the father of the prosecutrix on 05.10.2023, but, by misusing that the complainant had brutally beaten the prosecutrix and she however, managed to save her life and got her medico-legally examined and was living in the

house of her aunt. It is further argued by learned counsel for the petitioner that in her statement recorded under Section 163 of Cr.P.C., no allegations has been leveled by the prosecutrix against him. The offences under sections 363 and 366 of the IPC have not been made out against the petitioner. Investigation has since been completed. Challan has been presented and even charges under Sections 363 and 366 of the IPC have been framed as against him. Trial is likely to take time. No useful purpose would be served by detaining him in custody anymore. Hence, it is argued that the petition deserves to be allowed.

4. The respondent-State has filed a status report, as per which the prosecutrix is a minor but in the copy of the Aadhar Card which had been produced by the petitioner and prosecutrix before the High Court in writ petition (COCF No.3053-2023) the date of birth of the prosecutrix was shown as 07.08.2002 whereas as per her birth certificate she was born on 08.02.2007 and was a minor. It is also submitted that charges have since been framed after filing of challan report against the present petitioner.

5. I have learned counsel for the petitioner as well as learned State counsel and have gone through the record carefully.

6. The petitioner is alleged to have enticed away/kidnapped the daughter of the complainant as on 15.08.2023 on the pretext of performing marriage with her. In her statement as recorded under Section 164 of Cr.P.C., the prosecutrix is shown to have stated that she had left her house at her own and has not made any allegation against the present petitioner. She even refused to get her medical examination conducted after she was recovered

from the custody of the petitioner. Investigation has since been completed. Charges have been framed. Trial is likely to take time. It is infact, debatable as to whether any offence of kidnapping is made out or not. The attendant facts and circumstances of the case, I am of the considered opinion that the petitioner deserves to be released on bail at this stage. Hence, the petition is allowed, the petitioner is ordered to be released on bail subject to his furnishing personal as well as surety bonds to the satisfaction of the Chief Judicial Magistrate/Duty Magistrate concerned.

7. However, at the same time, to elevate the *bonafide* apprehension raised by the prosecution, it is ordered that the petitioner shall not intimidate or attempt to influence the complainant or any other material witness and shall not tamper with the evidence. The petitioner shall not leave India without the previous permission of the Court. In case of violation of any of above condition, the jurisdictional Court concerned will be empowered to consider the application for cancellation of bail of the petitioner, if required 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.

9. Since the main case has been allowed, pending application if any is rendered infructuous.

[MANISHA BATRA]
JUDGE

31st January, 2024
Parveen Sharma

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