

305

2024 : PHHC : 043619

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-59943-2023 (O&M)

DATE OF DECISION : 01.04.2024

MOBIN ALIAS LALA

... PETITIONER

V/S

STATE OF HARYANA

... RESPONDENT

CORAM: HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present: Mr. Bhisham Kumar Majoka, Advocate for the petitioner.

Ms. Mayuri Lakhanpal Kalia, DAG, Haryana.

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HARPREET KAUR JEEWAN, J. (ORAL)

CRM-13540-2024

1. This is an application for placing on record statements PW-1 and PW-2 as Annexure P-5. The same are allowed to be taken on record, subject to all just exceptions.

2. Registry is directed to tag the same at the appropriate place.

3. Disposed of.

Main case

4. Status report by way of affidavit of Vinod Kumar, Assistant Commissioner of Police, Ballabgarh, Faridabad along with the statement of the prosecutrix under Section 164 Cr.P.C. (Annexure R-1) has been taken on record.

5. Petitioner-Mobin @ Lala is seeking regular bail under Section 439 Cr.P.C in case bearing FIR No. 384 dated 30.07.2023 under Sections 346 IPC (Section 328, 365, 376(2)(n), 506 IPC and Section 12(1) of Haryana

Prevention of Unlawful Conversion of Religion Act, 2022 added later on) registered at Police Station Adarsh Nagar, District Faridabad.

6. Learned counsel for the petitioner contends that the main accused namely Shahrukh and the daughter of the complainant went away from their house and got married on 30.07.2023 as per the Hindu rites and rituals in Mumbai, as per the affidavit of Sharukhan (Annexure P-2) and as per the letter written by the daughter of the complainant (Annexure P-3). It is also contended that the daughter of the complainant is major. She was a teacher in a School at Faridabad. She has performed the marriage with her free consent. The co-accused namely Azruddin Aasmohammad Sayyad has been granted interim anticipatory bail vide order dated 25.09.2023 in CRM-M-46679-2023. Learned counsel for the petitioner further contends that the statement of the prosecutrix has already been recorded during the trial.

7. Learned State counsel has opposed the bail application, however, confirmed the fact that after registration of the FIR on 02.08.2023, the daughter of the complainant was recovered and her statement under Section 164 Cr.P.C. was recorded and her medical examination was also conducted. It is contended that the Forensic Science report regarding the samples of the prosecutrix is pending. However, the UPT of the prosecutrix was found negative. During the investigation on 03.08.2023, Sections 328, 365, 378(2), 506 IPC and Section 12(1) of Haryana Prevention of Unlawful of Religion Act, 2022 were added in the present case. On 04.08.2023, the prosecutrix submitted a written note upon which her statement under Section 161 Cr.P.C. was recorded. The petitioner was arrested on 16.09.2023 and he suffered a disclosure statement. The challan/final report under Section 173 Cr.P.C. was prepared against Shahrukh and petitioner-

Mubin @ Lala on 30.09.2023 and the same has been filed in the Court. Thereafter, supplementary challan against co-accused Azruddin has also been filed on 21.03.2024. Learned State counsel has further submitted that there are specific allegations against the petitioner that he has assisted the main accused Shahrukh for forcibly taking away the prosecutrix in the car.

8. I have considered the aforesaid submissions and perused the paper-book.

9. As per the prosecution version, on 29.07.2023 at about 7 A.M., the prosecutrix aged about 21 years, who is a teacher in School left home for going to School and she did not return home. As such, the matter was reported to the police by his father on 30.07.2023. On 02.08.2023, the prosecutrix was recovered. In her statement under Section 164 Cr.P.C. (Annexure R-1), she has categorically alleged that the present petitioner along with his brother Shahrukh has forcibly made her to sit in a car. It is also in allegations that they forced her to drink water and after that she became unconscious. She was taken to Mumbai, kept in a locked room and Sahil @ Shahrukh, co-accused of the petitioner forcibly raped her 3-4 times. They used to threaten her that they would kill her parents. They had even broken the lead of her mobile phone. Sahil @ Shahrukh forcibly performed marriage with her and she was brought back to Faridabad by train on 01.08.2023.

10. The prosecutrix has supported her version during her examination before the trial Court when she appeared as PW1 (Annexure P-5).

11. There are serious allegations against the petitioner that he had accompanied his brother at the time of forcibly picking up the victim-

prosecutrix on 02.07.2023 when she was going to School. There are also allegations that petitioner had accompanied his brother and both have taken the prosecutrix to Mumbai. The petitioner had assisted his brother for forcibly taking away the prosecutrix from Faridabaad to Mumbai. The prosecutrix has further alleged that her marriage was forcibly performed with the brother of the petitioner without her consent. The prosecutrix has supported her version in her statement recorded under Section 164 Cr.P.C. and *prima facie* she has also supported her version when she appeared as PW1.

12. The arguments raised on behalf of the petitioner that prosecutrix got married with the brother of the petitioner is a matter of trial and it would be seen during the trial as to whether the alleged marriage was with the consent of the prosecutrix or not?

13. As per the facts and allegations, the petitioner is not entitled to parity as the role attributed to co-accused Azruddin is distinguishable from the role attributed to the petitioner.

14. Keeping in view the gravity of allegations against the petitioner and the manner in which the petitioner has assisted the main accused, no justified ground is made out for granting the concession of regular bail to the petitioner.

15. Accordingly, the petition stands dismissed.

01.04.2024

Janki

**(HARPREET KAUR JEEWAN)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No