

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

219

CRM-M-62564-2023 (O&M)
Date of decision: 11.03.2024

Om Parkash

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Anoop Verma, Advocate
for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

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. 586 dated 02.08.2023, registered under Section 346 of IPC (Sections 363, 366 of IPC added and Section 346 of IPC deleted lateron) at Police Station Sector 8, Faridabad.
2. The petitioner, who has been booked for commission of offences punishable under Sections 363 and 366 of IPC and has been facing trial for the same, has filed this petition seeking grant of regular bail. The FIR in this case has been initially registered under Section 346 of IPC on the basis of statement recorded by the father of the victim alleging therein that the victim, who was his 18/19 years' old daughter, had left home on 31.07.2023 and did

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not come back. He apprehended that she had been kept confined by some unknown person. During investigation, the victim was recovered from the custody of the petitioner. Her statement under Section 164 Cr.P.C. was recorded, as per which, she had gone to Rajasthan alone on 31.07.2023 as she wanted to marry the present petitioner. She further stated that she had got married with him on 02.08.2023 and also stated that since they belonged to different caste, therefore, their marriage was not proper. She also disclosed that nothing wrong had been done with her. After registration of the FIR, the present petitioner was arrested on 22.08.2023. He was interrogated and suffered disclosure statement admitting his involvement in the commission of aforementioned offences. After completion of necessary investigation and usual formalities, *challan* under Section 173 Cr.P.C. was presented in Court and presently, the petitioner is facing trial for commission of subject offences. He had moved an application for grant of regular bail before the trial Court but the same was dismissed, vide order dated 28.11.2023.

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. His custodial interrogation is no more required. No recovery is to be effected from him. In the FIR itself, the complainant, who is father of the victim, had mentioned that her daughter was aged about 18/19 years, which proved that she was a major girl at the time of occurrence. As per her statement recorded under Section 164 Cr.P.C., she had voluntarily and on her own, had left her house. The ingredients for commission of offences punishable under Sections 363 and 366-A of IPC have not been made against

the petitioner even otherwise. The trial is likely to take some time. Hence, it is urged that the present petition deserves to be allowed.

4. Learned State counsel, on the other hand, has argued that during the course of investigation, the record pertaining to the age of the victim has been collected from her school, which proves that she was only 16 years' old at the time of occurrence. There are serious allegations against the petitioner. The victim is yet to be examined. There are chances of the petitioner's intimidating the victim, if extended benefit of bail. Therefore, he has argued that the present petition is liable to be dismissed.

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

6. The petitioner is alleged to have enticed away and induced the victim to leave her parental home on the pretext of performing marriage with her. The age of the victim was disclosed by his father himself as 18-19 years at the time of lodging of the FIR. In her statement recorded under Section 164 Cr.P.C., the victim had disclosed that she had gone at her own accord, though she deposed that her age was about 16 years, however, it is not made out that there was 'taking away' of the prosecutrix within the meaning of Section 363 of IPC. To constitute the offence of kidnapping as defined under Section 361 of IPC and punishable under Section 363 of IPC, it is necessary for the prosecution to establish the element of taking away. The well settled proposition of law is that the question whether there was "taking" must be decided with reference to all the circumstances of the case including the question whether the girl was of sufficient maturity and intellectual capacity to think for herself and make up her own mind, the circumstances under which

and the object for which, she felt it necessary and worthwhile to leave her guardian's protection. Where the prosecutrix leaves her father's house at her own accord and willingly accompanies the 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 the prosecutrix to slip out of keeping her lawful guardian and does not tantamount to "taking" within the meaning of definition of kidnapping under Section 361 of IPC. It is also well settled proposition of law that the accused must have played an active role in minor's leaving the custody of her lawful guardian to prove the offence under Section 363 of IPC and where the minor is of the age of discretion leaves the house of her parents of her own accord and goes with the accused, the accused cannot be charged with the offence of kidnapping. Reference in this regard can also be made to the observations made in *State of Punjab v. Rama Ram, 2009 (4) RCR (Criminal) 775*, *Ajit Singh v. State of Haryana, 2007 (3) RCR (Criminal) 287 (P&H)* and *Deep Chand @ Dipu v. State, 2000 Criminal Law Journal 463* and *Ramesh Singh v. State, (1988) 3 Crimes 890*. As in this case, the victim in her statement as recorded under Section 164 of Cr.P.C. is shown to have clearly stated that she had left her parental house voluntarily, therefore, it is of course a debatable question as to whether the petitioner had committed the subject offences or not. The trial is likely to take time. There is no basis for the contention that there are chances of the petitioner's intimidating the prosecutrix or any other witness since as disclosed by learned counsel for the petitioner, the victim has since been married else where. Keeping in view the nature of allegations as levelled against the petitioner, the period of his incarceration and attendant facts and circumstances of the case, I

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am of the considered opinion that no useful purpose would be served by keeping him in custody anymore.

7. Accordingly, the present petition is allowed and 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.

8. 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.

11.03.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes