

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.63181 of 2023
Date of Decision: 13.02.2024

Satyam ... Petitioner

Versus

State of Haryana ... Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Baljeet Beniwal, Advocate,
for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana,
for the respondent-State.

MANISHA BATRA, J.(Oral)

1. 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
662	01.09.2023	Urban Estate, District Hisar	363 and 366A of IPC

2. Brief facts relevant for the purpose of disposal of this petition are that the aforementioned FIR was registered on 01.09.2023 on the basis of written complaint filed by the complainant (name withheld) alleging therein that his daughter “R” (name withheld) aged 16 years and studying in Class XI had left her home in the evening of 01.09.2023 and eversince then she was found missing. He had made search for her everywhere but could not find her. He also informed that about three days prior to her having gone missing, he had found her while talking with her cell phone to some unknown youth and had tried to make her understand and then his daughter had assured him that she would not talk with that

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boy anymore. She raised suspicion that his daughter had been enticed away by the same boy.

3. As per the allegations, after registration of FIR, investigation proceedings were initiated. The victim was recovered from District Begusarai (Bihar) on 09.09.2023. The petitioner was arrested on 11.09.2023. He was interrogated and suffered disclosure statement admitting his involvement in the offence of taking the victim with him by saying that both of them used to love each other and also wanted to marry each other. He gave details of the manner in which the victim had gone with him and the places where they had stayed in the meanwhile. The victim refused to get her medical examination conducted. Her statement under Section 164 Cr.P.C. had been recorded wherein she stated that she had voluntarily left her house on 01.09.2023 and had contacted the petitioner to take her along with him as her parents had caught her while talking with him on the phone. She also stated that she wanted to perform marriage with the petitioner and there was no fault of the petitioner qua her absence from her house. After completion of necessary investigation and usual formalities, challan was presented in the Court and presently, the petitioner is facing trial for commission of offences since punishable under Sections 363 and 366A of IPC.

4. Learned counsel for the petitioner has argued that the facts of the case disclosed that the petitioner had not induced the victim nor he had taken her out of her lawful guardianship of her parents and rather it was the victim herself who had left her house and had gone to the petitioner and had asked him to take her away from her parents. They were in love with each

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other and also wanted to marry each other. He, therefore, has submitted that the offence of kidnapping from lawful guardianship of the parents of the victim was not made out against the petitioner. To fortify his argument, learned counsel for the petitioner has relied upon **S.Varadarajan v. State of Madras**, (1965) 1 SCR 243 wherein, the prosecutrix who was a minor girl had left her house when she was admonished by her family members when she expressed desire to marry the accused. They had performed marriage. The Hon'ble Supreme Court observed that there was a distinction between "taking" and allowing a minor to accompany a person. The two expressions are not synonymous in a case where the minor alleged to have been taken by the accused, leaves her father's protection knowing or having capacity to know the full import of what she has been doing and voluntarily joins the accused, then the accused cannot be said to have taken her away from the keeping of her lawful guardian. It was also observed that something more has to be shown in a case of this kind and that is some kind of inducement held out by the accused or an active participation by him in the formation of the intention of the minor to leave the house of the guardian. For that purpose, the prosecution has to establish that active part was played by the accused immediately prior to the minor's leaving the father's protection.

5. Learned State counsel while opposing the contention so made by learned counsel for the petitioner has argued that the petitioner had admittedly taken away the victim from the custody of his guardians and had committed the offence of kidnapping. He further argued that the question as to whether he had induced the victim or not was a matter of trial and could not be decided at this juncture.

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6. As per the allegations, the petitioner had enticed away the minor victim and had taken her to Bihar and then to different places on the pretext of marrying her. As already mentioned, in her statement recorded under Section 164 of Cr.P.C. the victim had disclosed that she had accompanied the petitioner out of her free will and rather it was she who had insisted him to take her along with him to some other place. At this juncture, it would be relevant to mention that 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

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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 and it was on her insistence that he had taken her along with him, therefore, it is ofcourse a debatable question as to whether the petitioner had committed the offence of kidnapping or not.

7. Then so far as the offence under Section 366A of IPC is concerned, as per this section, whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be liable for punishment. This provision requires two things viz.:

- (i) inducing a girl under eighteen years of age to go from any place or to do an act and
- (ii) intention or knowledge that she will be forced or seduced to illicit intercourse with a person.

8. It is clear from the above that inducement is an essential ingredient for commission of this offence. However, in the instant case, at this stage, there is no material to show that there was any inducement on the part of the petitioner qua the victim to leave her house so that she could be seduced to illicit intercourse either by himself or by some other person,

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rather, there is no allegation that even the petitioner had committed sexual intercourse with the victim or forced and seduced her to do so with some other person. As such, in my considered opinion, it is also debatable as to whether a case for commission of offence punishable under Section 366A of IPC is made out against the petitioner. The petitioner is in custody since 11.09.2023. The trial is likely to take time. Keeping in view the discussion as made above, the period as spent by the petitioner in custody and all the attendant facts and circumstances but without meaning to make any comment on the merits of the case, I am of the considered opinion that the petitioner deserves to be given concession of bail. Hence, the petition is allowed and the petitioner is ordered to be admitted to bail subject to his furnishing personal as well as surety bonds to the satisfaction of learned trial Court/Illaqa Magistrate.

13.02.2024
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(MANISHA BATRA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No