

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

287

CRM-M-64808-2023 (O&M)
Date of Decision: 11.01.2024

Razzu ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MS. JUSTICE MANISHA BATRA

Present: Mr. Akash Lather, Advocate
for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

Mr. Ranvijay Singh, Advocate
for the complainant.

MANISHA BATRA, J. (Oral)

1. The prayer in the present petition, filed under Section 438 Cr.P.C., is for grant of anticipatory bail to the petitioner in case FIR No. 397 dated 03.07.2023, under Sections 363, 366-A, 376(2)(n) of the IPC and Section 6 of the POCSO Act, 2012, registered at Police Station Sadar, Bhiwani.
2. The brief facts relevant for the purpose of disposal of this petition are that the aforementioned FIR was registered on the statement recorded by complainant 'N' (*name withheld*) alleging therein that on 01.07.2023 at about 01:30 PM, his minor daughter 'M' (*name withheld*), who was born on

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08.11.2005, had gone outside for urination but she did not return. They had made searches for her and suspected that she had been taken away by petitioner Razzu on the pretext of performing marriage with him. Mobile numbers of the victim as well as the petitioner were given. The complainant prayed for taking action in the matter. Initially, a case under Section 363 and 366-A of the IPC was registered. The investigation proceedings were initiated. The victim was recovered on 06.10.2023 from Nuh. Her statement under Section 164 Cr.P.C. was recorded, wherein she stated that on 01.07.2023, she had left her home and gone to Bahadurgarh as per her own wish with the petitioner. From Bahadurgarh, she had gone to Mewat with the father of the petitioner, wherein she had been residing with them in a rented house out of her own free will and did not want to go back to her parents. Thereafter, the offences under Sections 376(2)(n) and 120-B of the IPC and Section 6 of the POCSO Act, 2012 were added. The victim was got medico-legally examined at General Hospital, Bhiwani. Co-accused Sudhir, father of the present petitioner, was arrested on 07.10.2023. After completion of necessary investigation and usual formalities, *challan* under Section 173 Cr.P.C. qua co-accused Sudhir has been submitted in the Court.

3. The present petition has been filed by the petitioner and it has been argued by his counsel that he has been falsely implicated in this case. He has argued that in fact the petitioner and the victim were studying together in a school and they were in love affair with each other. The victim had gone with them on tour out of her own wish as she knew the petitioner and his family as a friend and lover. In her statement, recorded under Section 164 Cr.P.C., she has categorically stated that she had herself travelled to Bahadurgarh and then to Mewat with the father of the petitioner on her own wish. Although

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during her medical examination, the victim had stated that on 21.07.2023, she had sexual intercourse in the said rented house but she had nowhere stated that the petitioner had ravished her. In the FSL report, received on 17.11.2023, it is reported that semen could not be detected on any of the exhibits. There is a delay of 02 days in lodging of the FIR. The petitioner is ready to join the investigation. His custodial interrogation is not required. Therefore, it is urged that he deserves to be given concession of anticipatory bail.

4. Learned State counsel, in terms of status report dated 06.01.2024, assisted by learned counsel for the complainant has argued that there are serious and specific allegations against the petitioner. His custodial interrogation is required for thorough investigation of the matter. Learned counsel for the complainant has argued that the petitioner, in connivance with his father/co-accused Sudhir, has kidnapped/abducted the victim, who is a minor and then she was ravished in a rented house at Mewat. Therefore, it is argued that the petition does not deserve to be allowed.

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

6. The petitioner is alleged to have kidnapped/abducted the victim, who is a minor, on the pretext of performing marriage with her and is further alleged to have ravished her in a rented house at Mewat. The allegations against the petitioner are quite serious in nature. Although, the minor victim has stated in her statement recorded under Section 164 Cr.P.C. that she had gone to Mewat with the accused on her own wish, however, it is settled position of law that the consent of a minor is no consent. Hon'ble Supreme Court in *Iqbal vs. State of Kerala : 2007 (4) RCR (Criminal) 867* has held that the sexual intercourse with a woman with her or without her consent

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when she is under 16 years of age, amounts to rape. The petitioner, in his entire petition, has nowhere taken a plea that the victim was not a minor. More so, a perusal of the MLR shows that the victim, during her medical examination, had stated that she had sexual intercourse with the petitioner. Hence, the claim of the petitioner that the victim has not mentioned that he had ravished her stands falsified. A perusal of the MLR further shows that the hymen of the victim was reported to have ruptured membrane. Learned counsel for the petitioner has argued that custodial interrogation of the petitioner is not required. However, that along cannot be a good ground to grant anticipatory bail as observed by Hon'ble Supreme Court in ***Sumitha Pradeep v. Arun Kumar C.K. and another : 2022 (4) R.C.R. (Criminal) 977.*** The well settled proposition of law is that while considering an application for grant of anticipatory bail, the Court has to consider the nature of the offence, the role of the person, the likelihood of his influencing the course of investigation or tampering with evidence including intimidating witnesses and likelihood of fleeing justice. The Courts are required to be guided by consideration such as nature and gravity of the offences, the role attributed to the applicant and the facts of the case, while considering whether to grant anticipatory bail or refuse it and it is a matter of discretion to grant or not to grant bail. Reference in this context can be made to ***Sushila Aggarwal and others v. State (NCT of Delhi) : (2020) 5 SCC 1***, wherein Hon'ble Supreme Court had observed so. Applying the aforementioned conditions to the present case and keeping in view the nature of the offence alleged to have been committed by the petitioner, the quantum of sentence which the conviction may entail and the attendant facts and circumstances but without meaning to make any comment on the merits of the case, I am of the considered opinion

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that for conducting thorough investigation in the matter, the custodial interrogation of the petitioner is required. More so, no sparing or extraordinary circumstance has been made out entitling him to seek concession of pre-arrest bail as a matter of right. Accordingly, the petition is dismissed.

(MANISHA BATRA)
JUDGE

11.01.2024
Waseem Ansari

Whether speaking/reasoned : Yes
Whether reportable : Yes