



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

207

CRM-M No.65026 of 2023
Date of Decision: 30.05.2024

Gurwinder Singh @ Gurvinder Singh ... Petitioner

Versus

State of Punjab and another ... Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Neeraj Jain, Advocate,
for the petitioner.

Mr. Amandeep Singh Samra, AAG, Punjab,
for the respondent-State.

Mr. M.S. Virk, Advocate,
for respondent No.2.

MANISHA BATRA, J.(Oral)

1. The present petition has been filed under Section 439 of Cr.P.C. seeking regular bail in the FIR mentioned below:-

FIR No.	Police Station	Sections
79	Sardulgarh, District Mansa	363 and 366-A of IPC

2. Brief facts of the case relevant for the purpose of disposal of the present petition are that the aforementioned FIR was registered on the basis of statement recorded by the complainant “S” (name withheld) on 03.06.2023, alleging therein that the victim “K” (name withheld) who was his 17 years 4 months’ old daughter studying in a local school, was found to be missing from his house in the morning of 02.06.2023. They made search for her, but could not find her anywhere. He raised suspicion

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that she had been enticed away by the present petitioner on the pretext of performing marriage. After registration of FIR, investigation proceedings were initiated. The victim was recovered on 07.06.2023 from the custody of the petitioner. He was also arrested. The victim refused to get her medical examination conducted. Her statement under Section 164 of Cr.P.C. was recorded before the Illaqa Magistrate wherein she stated that she had gone from her house at her own will with the petitioner as she wanted to solemnize marriage with him after the age of attaining majority. No forcible act was committed upon her by the petitioner and that he was not at fault in the entire incident as it was she who had called him at her house. After completion of necessary investigation and usual formalities, challan was presented in the Court and presently, he is facing trial for commission of offences punishable under Sections 363 and 366-A of IPC.

3. The petitioner had moved an application for grant of regular bail before the learned trial Court which had been dismissed vide order dated 13.07.2023.

4. It is argued by learned counsel for the petitioner that he has been falsely implicated in this case by the father of the victim. Infact, both of them are in love with each other and want to perform marriage after attaining the age of majority by the victim. The victim and the petitioner had made discussion about this fact with their parents but they did not understand and rather the father of the victim involved him falsely in this case. He is in custody since 08.06.2023. Investigation has since been completed. The trial is likely to take time. In her statement recorded under

Section 164 of Cr.P.C., the victim had stated that she voluntarily left her

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house at her own will and the petitioner was not at fault. His further detention would not serve any purpose. The victim did not even get her medical examination conducted. Neither the ingredients for commission of offence punishable under Section 363 of IPC nor of offence under Section 366-A of IPC have been made out against him. With these broad submissions, it is argued that the petition deserves to be allowed and he deserves to be released on bail.

5. Status report has been filed by the respondent-State, as per which, there are specific allegations against the petitioner who had taken away the minor victim out of lawful custody of her parents without their consent and knowledge. The consent of the victim being minor is not material. Learned State counsel assisted by learned counsel for respondent No.2 has argued that the petitioner has criminal antecedents as apart from this case, he was also involved in other case bearing FIR No.649 dated 06.12.2018 registered under Sections 294, 341 and 34 of IPC read with Section 12 of Protection of Children from Sexual Offences Act, 2012 at Police Station Sadar Ratia, District Fatehabad though he had been acquitted subsequently in that case. It is further argued that the victim is yet to be examined. There are chances of his intimidating the material witnesses, if extended benefit of bail. Therefore, it is argued that the petition does not deserve to be allowed.

6. I have heard learned counsel for the parties at considerable length and have gone through the record carefully.

7. As per the allegations, the petitioner had enticed away the victim on the pretext of performing marriage with her. The victim was

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admittedly 17 years and 4 months old at that time. A perusal of her statement as recorded under Section 164 of Cr.P.C. reveals that she stated that she had left her home as per her own free will and the petitioner had no hand in the same and he was not at fault at all. The petitioner has been booked for commission of offence punishable under Section 363 of IPC. The offence of kidnapping is defined under Section 361 of IPC and the same is punishable under Section 363 of IPC. 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 victim 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 victim and it falls short of an inducement to the victim 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.**

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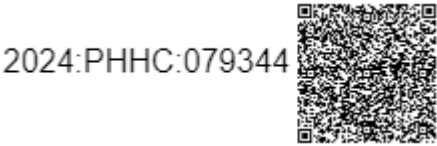


Haryana, 2007 (3) RCR (Criminal) 287 (P&H) and **Deep Chand @ Dipu v. State**, 2000 Criminal Law Journal 463 and **Ramesh Singh v. State**, (1988) 3 Crimes 890.

8. 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 offence of kidnapping or not?

9. Further, with regard to the offence under Section 366-A of IPC, it may be mentioned that there are two necessary ingredients of this offence which are that there must be inducement of a girl under eighteen years of age to go from any place or to do an act and the accused must have the intention or knowledge that she will be forced or seduced to illicit intercourse with a person. At this stage, in this case, no material has been placed on record to show any inducement on the part of the petitioner to make the victim leave her house so that she could be seduced to illicit intercourse either by himself or by some other person. Rather infact, there is no allegation at all that the petitioner had committed any act of sexual intercourse with the victim or forced or seduced her to do so with some other person. As such, the question qua commission of offence punishable under Section 366-A of IPC is also debatable one in the present case. The petitioner is in custody since 08.06.2023. The trial is likely to take time. Keeping in view the discussion as made above, the period of incarceration of the petitioner and the overall facts and circumstances, I am persuaded to hold that pending trial, the petitioner deserves to be released on bail.

Accordingly, 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.

10. It is clarified that observations made hereinabove shall not be construed as an expression of opinion on the merits of the case.

30.05.2024
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(MANISHA BATRA)
JUDGE

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