In the Court of Priya Sood, Addl. Sessions Judge, Hoshiarpur

Bail Application type: Under Section 438 Cr.PC
No. 1854 of 11.8.2017
CNR No. PBHO010051592017
Date of order : 21.3.2018
Pronounced by: Priya Sood
Addl. Sessions Judge, Hoshiarpur.
UID No.PB0065

Harminder Singh son of Balwinder Singh, resident of Village Bhuno, PO Bahowal, Tehsil Garhshankar, District Hoshiarpur.

….Applicant/accused

Versus

State of Punjab

Present: Shri DK Dadra, Adv for the accused-applicant
Shri BL Anmol Addl. PP for the State
Shri Vishal Sharma Adv for complainant

O R D E R

Applicant-accused has sought pre arrest bail in FIR No. 101 dated 3.8.2017, under Section 363, 366A IPC PS Chabbewal, District Hoshiarpur.

2. Applicant-accused has been booked in the present FIR on the basis of statement of Mohinder Pal son of Ajit Ram, r/o village Shergarh, PS Sadar, Hoshiarpur, aged 44 years, recorded on 3.8.2017 to the effect that complainant is working in police department having PAP Number 722 Battalion 75. Complainant has two daughters and one son. The date of birth of elder daughter i.e. prosecutrix is 10.4.2011, who is studying in 10+1 (Medical) class in Shri Guru Har Rai College, Chabbewal. Yesterday, on 2.8.2017, she left her home for college but did not return. Regarding this, Shashi Bala, wife of

complainant, telephonically informed the complainant that prosecutrix has not returned from college, whereupon, complainant talked to the bus driver of the college, who told the complainant that after the College prosecutrix had not boarded the bus. Later, at about 8.00 PM, complainant talked to the Principal of College, who told the complainant that entire staff had gone back and that the matter will be looked into the ext morning. Today when complainant reached the College, the Principal told the complainant that on 1.8.2017 prosecutrix had stated that she is not feeling well and had asked the Principal for verifying. by calling at Mobile No. 98724-65253, and to allow her to go home. Upon this Principal made telephonic call on the said number and the person on the other end of the phone told the Principal that he is brother of prosecutrix and the prosecutrix went with the said boy and reached the house at 2.30 PM. Now the prosecutrix is missing since 2.8.2017. Complainant suspects that some unknown person has enticed the prosecutrix with intention to solemnize marriage with her. Action be taken.

3. The learned counsel for applicant-accused has prayed that prosecutrix has solemnized marriage with the applicant-accused and the Hon'ble High Court, vide order dated 1.3.2018, has granted protection of life and liberty to the couple. It is further prayed that since prosecutrix is legally wedded wife of applicant-accused, applicant-accused would be the guardian of the prosecutrix and no offence u/s 363, 366 IPC can be said to have been committed by the accused-applicant.

4. The learned Addl. PP for State, assisted by the learned counsel for

complainant, has hotly contested the bail application by highlighting the fact that prosecutrix had concealed her date of birth from the Hon'ble High Court and had represented herself to be major whereas she was minor on the date of her marriage. The Hon'ble High Court, taking notice of the said fact, vide order dated 1.3.2018 granted protection to the applicant-accused only to the extent that it can be curtailed in accordance with law and not beyond that. It is prayed that the Hon'ble High Court has also clarified that whatever legal rights the parties have, in accordance with law, they may agitate before the appropriate Forum. The learned counsel for the complainant has further addressed the court on Section 12 of Prohibition of Child Marriage Act, 2006, whereunder the child marriage would be void and prayed that on account of marriage being void, having been performed by taking the minor out of the keeping of her lawful guardian, no protection under law could be granted to the applicant-accused and the bail application be, therefore, dismissed.

5. I have given a careful thought to the respective submissions and have also very keenly gone through the investigation record.

6. So far as the age of prosecutrix is concerned, the Hon'ble High Court has taken note of the fact that prosecutrix is minor and only granted limited protection to the couple. The Investigating Agency has also taken into possession the birth certificate of prosecutrix, wherein her date of birth is mentioned as 10.4.2001, thereby showing that on the date of occurrence the prosecutrix was minor. The case of accused-applicant is that he has solemnized the marriage with the prosecutrix. The learned counsel for applicant-accused has

relied upon the Hon'ble Punjab & Haryana High Court judgment **Sukh Ram vs State of Haryana, 2010(4) RCR (Criminal) 875,** wherein when prosecutrix had love affair with accused and eloped with accused when she was aged 16 years and 8 months, it was held that prosecutrix had knowledge and capacity of having full import of what she was doing and the accused was, therefore, entitled to acquittal.

7. At the same time, in the case titled **Amnider Kaur and another vs State of Punjab and others, 2010(1) RCR (Criminal) 261,** while discussing run away marriage of minor girl aged 16 years and 2 months, in the light of Section 12 of Prohibition of Child Marriage Act, 2006, it has been held that such a marriage is void marriage and even the persons who are party to such child marriage are liable for punishment under the Act.

8. Applying the proposition of law as laid down by the Hon'ble High Court in the case **Amninder Kaur and another (supra),** it needs to be reiterated here that admittedly prosecutrix is still minor. Section 12 of the Act makes the marriage of child, who is taken or enticed out of the keeping of her lawful guardian, a void marriage. In the instant case, prosecutrix has been taken out of legal guardianship of her father and the Hon'ble High Court has granted limited protection to the couple without prejudice to the legal rights of the parties in accordance with law.

9. In this backdrop, thus, no ground is made out to grant any protection to the accused-applicant, who has taken the minor child out of the lawful guardianship of her parents and performed marriage with the child, who

is minor. The bail application is accordingly dismissed. Police record be returned. File be consigned to the record room.

Announced :21.3.2018
baljinder

(Priya Sood)
Additional Sessions Judge
Hoshiarpur
UID No.PB0065

No. 1854 of 11.8.2017
CNR No. PBHO010051592017

Present: Shri DK Dadra, Adv for the accused-applicant
Shri BL Anmol Addl. PP for the State
Shri Vishal Sharma Adv for complainant

Arguments concluded. Vide separate detailed order of today, the bail application has been dismissed. Police record be returned. File be consigned to the record room.

Announced : 21.3.2018
baljinder

(Priya Sood)
Additional Sessions Judge
Hoshiarpur-UID No.PB0065