
(2009) 01 P&H CK 0040
In the Punjab And Haryana At Chandigarh
Case No : Criminal Misc.- M No.33986 of 2008

Vinod Kumar

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 27-01-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 363, 366A

Citation : (2010) 6 RCR(Criminal) 1821

Hon'ble Judges : S.S. Saron, J

Bench : Single Bench

Advocate : Pritam Saini, for the Appellant; Ajay Singh Ghangas, D.A.G., Haryana, for the Respondent

Final Decision : Allowed

Judgement

S.S. Saron, J.—Heard learned counsel for the parties.

2. The petitioner seeks regular bail pending trial in a case registered against him for the offences under Sections 363, 366-A, 376(2) (g), 380, 506 and 120-B IPC.

3. The FIR has been registered on 12.6.2008 on the complaint of Amar Singh, the father of the prosecutrix. It has been alleged by the complainant that on 28.5.2008 at about 8.30 in the morning his daughter (prosecutrix) had gone to answer the call of nature and did not return thereafter. They inquired about her and searched her at their own level. It transpired that Jagdish (non- petitioner) their tenant was also not present. One Sham Sunder informed the complainant that Jagdish (non-petitioner) and the prosecutrix were seen going towards Nizampur in a jeep at 10.00 a.m. It was alleged that Jagdish had enticed the minor daughter of the complainant with an intention to marry her.

4. Leaned counsel for the petitioner has placed strong reliance on the order dated 21.11.2008 in terms of which Nanag Ram, a co-accused of the petitioner has been granted the concession of bail. It is submitted that the petitioner is an employee of aforesaid Nanag Ram. In the said petition the stand taken was that

marriage between the prosecutrix and Jagdish had been solemnized. A reference was made to the photographs of the marriage and also an affidavit dated 21.6.2008 deposed by the prosecutrix.

5. Learned counsel for the State has referred to the statement u/s 164 Cr. P. C. of the prosecutrix which was recorded on 11.7.2008. It is submitted that in the said statement the prosecutrix clearly states that she was raped by the petitioner as also Nanag Ram and Jagdish. It is also submitted that the date of birth of the prosecutrix is 20.11.1991 and on the date of the occurrence she was not a major.

6. I have given my thoughtful consideration to the contentions of the learned counsel for the parties. The record of the case of Nanag Ram v. State, Criminal Misc.-M No.27272 of 2008 has also been perused. In the said case the medical report dated 20.6.2008 has been placed on record. In terms of which the age of the prosecutrix was determined by way of radiological examination. It was observed from the clinical evidence and radiological examination conducted therein that the age of the prosecutrix was between 18 and 19 years as on the date of examination i.e. 20.6.2008. The prosecutrix had been with the accused Jagdish from 28.5.2008 to 10.7.2008. In the FIR that has been registered there is no direct allegations against the petitioner although in the statement u/s 164 Cr. P. C. the prosecutrix has named the petitioner also as the person who had committed rape. The evidence in the case is still to be recorded. The case of the petitioner is at par with that of Nanag Ram, who has been granted the concession of bail vide order dated 21.11.2008. The question whether the petitioner indeed is involved would be gone into by the trial Court after the evidence has been led.

Keeping in view the observations made in the order dated 21.11.2008 granting the concession of bail to Nanag Ram, the petitioner is also entitled to the concession of bail.

7. Accordingly, the criminal miscellaneous petition is allowed and the petitioner on his furnishing personal bond and surety to the satisfaction of the learned Chief Judicial Magistrate, Narnaul shall be admitted to bail. Nothing stated herein shall be construed as an expression on the merits of the case which shall be gone into by the learned trial Court on the basis of evidence and material as produced before it.