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(2011) 11 P&H CK 0163

High Court Of Punjab And Haryana At Chandigarh

Case No: Case No.: Criminal Miscellaneous No. M-30537 of 2011

Vicky		APPELLANT
	Vs	
State of Punjab		RESPONDENT

Date of Decision: Nov. 9, 2011

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 164
- Penal Code, 1860 (IPC) - Section 363, 366

Citation: (2011) 11 P&H CK 0163

Hon'ble Judges: L.N. Mittal, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

L.N. Mittal, J.
Accused Vicky has filed this petition for anticipatory bail in case FIR No. 60 dated 24.07.2011, under Sections 363 and 366 of the Indian Penal Code, registered at Police Station Dera Baba Nanak, District Batala.

2. I have heard Learned Counsel for the parties and perused the case file.

3. FIR was lodged by Makhan Singh alleging that his daughter (prosecutrix) aged 171/2 years left the house on 21.07.2011 at 08:45 A.M. for school, but did not come back. On checking money, the complainant found that cash amount of Rs. 1,35,000/- was missing. Petitioner"s co-accused Bhupinder Singh @ Jony was also missing since the same time.

4. The prosecutrix, in her statement recorded u/s 164 of the Code of Criminal Procedure before Magistrate, stated that under threat by petitioner"s co-accused Bhupinder Singh, she had given him Rs. 1,35,000/- on the night between 20/21.07.2011. When she came out of her house on 21.07.2011, she was forcibly put in a car by Bhupinder Singh. There were three other persons (including the present petitioner referred to as doctor) in the

said car. She was forcibly taken away. Bhupinder Singh also raped her. He also contracted marriage with her in Gurudwara without her consent. Counsel for the petitioner vehemently contended that the prosecutrix voluntarily lived with Bhupinder Singh for 15 days and contracted marriage with him in Gurudwara, which was performed on 21.07.2011 and both of them also filed protection petition before Punjab Human Rights Commission. It was also vehemently contended that version given in the FIR has been materially changed subsequently by the prosecution. It was also contended that the prosecutrix, as per her own affidavit, was major.

5. Learned State counsel, on instructions from ASI Bhupinder Singh, contended that date of birth of the prosecutrix is 15.01.1994, and therefore, she was aged 171/2 years at the time of occurrence and was thus minor. It was also contended that the prosecutrix has herself stated that petitioner and other co-accused including Bhupinder Singh kidnapped her forcibly and Bhupinder Singh raped her.

6. I have carefully considered the rival contentions.

7. Affidavit of the prosecutrix, asserting that she is major, carries no weight when her date of birth is stated to be 15.01.1994 depicting that she was minor at the time of occurrence. She has specifically named the petitioner also being among the kidnappers. Alleged consent of the prosecutrix would also carry no weight when she was not competent to give any such consent being minor.

8. In view of the aforesaid, without meaning to express any opinion on merits of the case, I do not find it to be a fit case to extend concession of anticipatory bail to the petitioner.

9. Dismissed.