

Pankaj Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Apr-26-1996

Reported in : 1996CriLJ3265; 1996(3)WLC106; 1996(1)WLN130

Judge : R.R. Yadav, J.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 164, 438 and 439;
[Indian Penal Code \(IPC\), 1860](#) - Sections 366A and 376

Appeal No. : Cr. Misc. Bail Appln. No. 982 of 1996

Appellant : Pankaj

Respondent : State of Rajasthan

Advocate for Def. : K.L. Thakur, Public Prosecutor

Advocate for Pet/Ap. : R.K. Charan, Adv.

Disposition : Petition allowed

Judgement :

ORDER

R.R. Yadav, J.

1. Heard.

2. Perused the case diary.

3. According to the medical report the age of the prosecutrix was between 16 to 17 years on the date of incident.

4. Main thrust of the argument of the learned counsel for the applicant before me is that from the statement recorded under Section 164 Cr.P.C. it is evident that the girl did not raise any objection either at the place of incident or at Udaipur. She was also moving with accused persons from Udaipur to Ahmedabad and Ahmedabad to Bombay without raising any objection. The aforesaid conduct of the prosecutrix is sufficient to prove her consent. Thus no offence under Section 366A of IPC of kidnapping of a minor girl is made out against accused applicant.

5. It is next contended by the learned counsel for the applicant that accused applicant Pankaj has not committed offence under Section 376 of IPC with prosecutrix. The main accused who is alleged to have committed offence under Section 366A of IPC read with 376 IPC has already been enlarged on bail.

6. Learned P.P. vehemently opposed the aforesaid arguments advanced by the learned counsel for the applicant. According to learned P.P. the statement of prosecutrix recorded under Section 164 Cr.P.C. leads towards an irresistible conclusion that the applicant is guilty of an offence under Section 366A of IPC. According to learned P.P. since the age of prosecutrix was below 18 years on the date of incident, therefore, her consent is immaterial. It is also argued by the learned P.P. that main accused has been enlarged on bail under Section 439 Cr.P.C. and not under Section 438 Cr.P.C. hence accused applicant is not entitled to claim parity.

7. I am of the opinion that the argument advanced by learned P.P. has substance. Since in the present case the girl was below 18 years on the date of incident, therefore, her movement from Udaipur to Ahmedabad and Ahmedabad to Bombay even if taken to be with her consent such consent is immaterial and the accused applicant is not entitled to be enlarged on anticipatory bail.

8. As regards whether an offence under 366A of IPC is made out or not, it is sufficient to observe at this stage that there are three ingredients to make out an offence under the aforesaid section, firstly a minor girl below the age of 18 years is induced by the accused, secondly she is induced to go from one place to another place from lawful custody and lastly she is induced with intent that she may be or knowing that it is likely that she will be forced to illicit intercourse with another person. From perusal of case diary aforesaid ingredients are fully satisfied against accused applicant hence he is not entitled to be enlarged on anticipatory bail in this case.

9. In my considered opinion the provisions under Section 438 Cr.P.C. has to be sparingly used in rarest of rare cases where the conscience of the Court of justice is satisfied that the accused applicant is innocent or he has been falsely implicated due to some malafide or it appears that it is a case of over implication by an unscrupulous complainant. The malafide must be specifically alleged and required to be proved by the accused applicant. It is condition precedent that anticipatory bail must be moved before cognizance is taken and non-bailable warrant is issued otherwise the expression 'reason to believe that he may be arrested on any accusation of having committed a non-bailable offence' used by legislature under Section 438 Cr.P.C. would become superficial which is impermissible.

10. The extra-ordinary power conferred upon Courts of justice under Section 438 Cr.P.C. must be exercised in exceptional cases only. The facts of the present case do not fall within the meaning of exceptional case. The statement of prosecutrix recorded by learned Magistrate under 164 Cr.P.C. clearly reveals that accused applicant stopped his jeep on the road beside the prosecutrix and rest of the co-accused started to persuade her that her father has met with an accident and has been hospitalised. When she made a request to take her to parents home to inform her mother and brother they did not care her request and forcibly compelled her to sit in the jeep of accused applicant who proceeded to Udaipur. When accused reached Udaipur the present accused applicant Pankaj Driver exhorted other co-accused to the effect that he has fulfilled his promise now they have to take care of the prosecutrix. The overt act alleged in the statement of prosecutrix against accused applicant is sufficient to reject his anticipatory bail.

11. It is well to remember that Section 438 Cr.P.C. is not meant to assist an accused person to avoid due process of law or to evade arrest in pursuant to non-bailable warrant issued by a Court of law or to facilitate an accused to tamper with prosecution evidence. In such a situation accused person must surrender before Court which has issued non-bailable warrant against him and seek regular bail. For the reasons stated above the instant anticipatory bail application is hereby rejected.

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