

**IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL**

Criminal Misc. Application No. 280 of 2007

Chanderpal.

..... Applicant.

Versus

State
and another.

..... Respondents

Present :

Sri Manish Arora, Advocate for the applicant.
Sri P.S. Bohara, Brief Holder for the State.

Hon'ble Servesh Kumar Gupta, J.

1. By way of this petition, a prayer has been made to quash the order dated 06.12.2006 passed by Additional Sessions Judge/ Fast Track Court, Haridwar in Sessions Trial No. 381 of 2004 titled as State Vs. Soni alias Sonu. The said trial was being proceeded against accused Soni alias Sonu and others for the offence under Section 363, 366, 506 IPC pertaining to Police Station Manglore, District Haridwar. After chief examination of PW1 Guddi on dated 06.03.2006, an application was moved by prosecution alleging that Chanderpal (petitioner) has been named (as involved) in commission of crime so prayer was made by ADGC for taking cognizance against Chanderpal. On this application, learned trial Judge passed order of cognizance, taking cognizance against Chanderpal for offence punishable under Section 363, 366, 506 IPC. He was asked to stand trial along with other co-accused persons, who were already facing trial. This order has been challenged by way of this petition.

2. The background facts are that First Information Report was lodged by Guddi on 27.05.2004 at 05.45 p.m. As per contents of the same, incident occurred on 25.05.2004 at 12 noon

when she returned to her house after serving lunch to her husband, who was working in the agriculture field, she did not find her 14-year daughter Km. Bunty at home. She was searched in the nearby vicinity but in vain. When she along with her husband and brother-in-law were returning desperately, they were informed that Km. Bunty had been seen along with Chanderpal, Sonu and Pramod in the agriculture field of Muqsood. As per this information, when they again searched Km. Bunty, all these three persons named above, were there in the agriculture field of Muqsood. Sonu shouted towards Guddi and said that her daughter (Km. Bunty) has been lifted from her house at the strength of firearms. Sonu warned Guddi and her husband, asking them to return to their house otherwise they will also be killed. Guddi along with her husband when made bid to apprehend the accused persons, all the accused persons took to their heels. Km. Bunty was recovered in an unconscious state from the field. When she gained consciousness, she informed that neighbouring girl Sangeeta called her, when she was in her house. On coming out from the house accused Sonu, Chanderpal and Pramod armed with firearms and lathi were standing. Sonu placed handkerchief upon her mouth and nose making her unconscious and this way, she was forcibly abducted from there. This report was lodged on 27.05.2004. The reason for delay of more than 48 hours in lodging the same has been stated as regaining of consciousness by Km. Bunty.

3. Learned counsel for the petitioner has drawn attention of this Court towards the statement of Km. Bunty recorded under Section 161 Cr.P.C. on next day after lodging the First Information Report i.e. on 28.05.2004 wherein she has specifically denied the presence of Chanderpal along with rest

of the accused persons. Besides, in the statement recorded under section 164 Cr.P.C., Km. Bunty has not named Chanderpal implicating him in the offence even the minimal along with accused Sonu.

4. Learned Brief Holder has argued that Chanderpal has been named in the First Information Report but this argument is not substantial for the reasons that accused Chanderpal has been named by Guddi, mother of Km. Bunty. When the victim Km. Bunty specifically denied the presence of Chanderpal at any point of time of the alleged occurrence then naming him by Guddi is worthless. Km. Bunty is 14-year old girl and she is well acquainted with all accused persons. Had there been any implication of Chanderpal in occurrence then Km. Bunty would have certainly named him in her statement recorded either under section 161 Cr.P.C. or 164 Cr.P.C. Otherwise also, the statements of Guddi, as has been made in the First Information Report and before the court, do not inspire confidence. None can be extended liberty to name anyone in the statement and invoke powers of court under section 319 Cr.P.C. for forcing him to face rigmarole trial.

5. In view of the above, this petition has merits and deserves to be allowed. The petition is accordingly allowed. Impugned order dated 06.12.2006 made against the petitioner is hereby quashed.

(Servesch Kumar Gupta, J.)
31.10.2011

SKS