

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-23591-2015 (O&M)

Date of decision : 02.11.2015

Anif

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Manoj K. Tanwar, Advocate,
for the petitioner.

Mr. Yashwinder Singh, DAG, Haryana,
assisted by DSP Tanya Singh.

JITENDRA CHAUHAN, J. (Oral)

The instant petition has been preferred under Section 439 Cr.P.C. seeking regular bail in case FIR No.115 dated 14.05.2014, registered under Sections 363, 366A, 354-A, 376, 120-B of the Indian Penal Code and Section 4 of the Prevention of Children from Sexual Offences Act, at P.S. Nangal Chaudhary, Distt. Mohindergarh.

It is contended that the police has not investigated the matter in a proper manner. The prosecutrix, in her first statement dated 16.06.2014, recorded under Section 164 Cr.P.C. has specifically states that she was raped by co-accused Naresh and Sunil, whereas, the petitioner is not even named in the FIR. Even in the second statement

dated 18.07.2014, there is no allegation of rape against the petitioner. The petitioner is in custody since 18.07.2014. The application moved by the complainant under Section 319 Cr.P.C. was dismissed by the trial Court vide order dated 02.12.2014, holding that police investigation against Naresh and Sunil was still pending.

Heard.

On the application moved under Section 319 Cr.P.C., the following order was passed by the learned trial Court on 02.12.2014:-

“Status report from CIA Narnaul is received. It has been reported that accused Naresh and Sunil did not join the investigation despite notice and now warrants of arrest have been issued against them by Sh. M.Z. Khan, JMIC, Narnaul. The complainant has already filed an application under Section 319 Cr.P.C. for summoning Naresh and Sunil Kumar as additional accused. Since police investigation against Naresh and Sunil is still pending, the application under Section 319 Cr.P.C. is not maintainable at stage. Hence, application is dismissed. Remaining unexamined PWs be summoned for 19.12.2014.”

However, on the application filed by the State, they have

now been discharged. Now the investigation against co-accused Naresh and Sunil is complete. The allegation of rape is against co-accused, Naresh and Sunil, the first petition was dismissed in view of the fact that the investigation was still in progress, however, now the challan has already been presented before the competent Court qua the petitioner. The order dated 02.12.2014 has also been set aside by this Court vide order of even date passed in connected matter bearing CRR-189-2015 and the competent Court has been directed to pass the order afresh on the application under Section 319 Cr.P.C. In case, on re-appraisal, the trial Court allows the application under Section 319 Cr.P.C., the same would amount to de novo trial.

Keeping in view the above and the fact that the petitioner is in custody since 18.07.2014, without adverting to the merits of the instant case, this petition is allowed. The petitioner be admitted to bail during the pendency of the trial, subject to his furnishing bail bonds/surety bonds, to the satisfaction of the trial Court.

02.11.2015
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(JITENDRA CHAUHAN)
JUDGE