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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.25336 of 2015
Date of Decision: 06.08.2015

IQBAL

.....Petitioner

Vs

STATE OF HARYANA

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Jamshed Ahmed, Advocate
for the petitioner.

Mr. Yashwinder Singh, D.A.G., Haryana.

1. *Whether Reporters of local papers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the Digest?*

RAJ MOHAN SINGH, J.(Oral)

Petitioner seeks grant of regular bail under Section 439 Cr.P.C., in case bearing FIR No.103 dated 12.06.2014, under Sections 376-D/506 IPC and Section 4 of POCSO Act, P.S. Nagina, District Mewat.

The FIR was registered on the statement of one Jakir son of Chaw Khan father of the prosecutrix. Allegations are that on 16.06.2014 minor daughter of the complainant namely Irfana @ Apan aged about 16 years was kidnapped by Billa @ Billu s/o Deen Mohd., with the help of his other companions and committed rape upon her. She was left in the fields of one Gumat with threat not to

disclose about the occurrence to anyone. The prosecutrix was recovered and her statement under Section 164 Cr.P.C., was recorded on 13.06.2014, wherein she disclosed her age to be 17 years. In the statement she disclosed that in the night of 10.06.2014 at about 3 A.m., she woke up and went to meet call of nature. Her mother was sleeping in the house and her father and brother were away. She saw Aabid s/o Deen Mohd., sitting in the street on his motorcycle in starting condition. Iqbal son of Rozedar and Bilal son of Deen Mohd. were also with him, who forcibly took her away on motorcycle. Bilal committed wrong act upon her without her consent. She was left between Nagina-Marhi Khera.

Learned counsel for the petitioner has argued that at the time of registration of the FIR, the prosecutrix was present along with her father when statement of her father was recorded. There is specific recital to this effect in the police proceedings attached with the FIR itself. The narration of facts given in the FIR and the statement under Section 164 Cr.P.C., are at variance. According to learned counsel the age of prosecutrix is differently mentioned at different stages. In the statement under Section 164 Cr.P.C., her age is stated to be about 17 years, whereas in the FIR her age is shown to be about 16 years. In the report of medical examination, the Doctor has also stated about her physical appearance.

The part attributed to petitioner as per statement recorded under Section 164 Cr.P.C., is that he along with Aabid and Bilal

forcibly taken away prosecutrix on motorcycle. Petitioner is not the person who committed the offence under Section 376 IPC in any manner.

Learned State counsel on instructions from HC Dinesh states that petitioner has duly participated in the commission of crime in view of his association with Bilal, who was found to be juvenile and has been granted regular bail.

Be that as it may the fact remains that *prima facie* there is conflict in the statement recorded under Section 164 Cr.P.C., as well as in the FIR to the extent there is no mention about participation of accused as per FIR.

At this stage, without adverting to anything on merits, petitioner is ordered to be released on regular bail, subject to his furnishing adequate bail bonds/surety bonds to the satisfaction of Chief Judicial Magistrate, Nuh.

Accordingly, this petition is allowed.

Nothing expressed hereinabove would be construed to be an expression of any opinion on merits of the case.

August 06, 2015.
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(RAJ MOHAN SINGH)
JUDGE