

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

**CRM-M No.26977 of 2015**

Date of Decision: 18.08.2015

Ashok Kumar and another

....Petitioners

Versus

State of Haryana

....Respondent

**BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY**

- 1. Whether reporters of local newspapers may be allowed to see the judgment ? (Yes/No)**
- 2. To be referred to reporters or not ? (Yes/No)**
- 3. Whether the judgment should be reported in the Digest ? (Yes/No)**

Present:- Mr. J.S. Mehndiratta, Advocate  
for the petitioners.

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**DAYA CHAUDHARY, J.**

The present petition has been filed under Section 438 Cr.P.C for grant of anticipatory bail to the petitioners in case FIR No.32 dated 06.02.2012 registered under Sections 363, 366(A) and 376 of the Indian Penal Code at Police Station Shivaji Colony, Rohtak, District Rohtak.

Learned counsel for the petitioners submits that the petitioners were initially found innocent by the police during investigation but subsequently, they were summoned to face trial in an application moved by the prosecution under Section 319 Cr.P.C. He further submits that the petitioners are ready to join the Court proceedings and to abide by all terms and conditions to be imposed by this Court or by the trial Court. He further submits that the statement of the prosecutrix was recorded under Section 164 Cr.P.C before the Judicial Magistrate Ist Class, Rohtak, wherein, it was stated that her parents wanted to marry her forcibly with

some other person but she was in love with accused-Ajay and wanted to marry with him. She further stated therein that she remained in the company of Ajay for some time and thereafter, they solemnized marriage. The prosecutrix was not interested in going with her parents. She was produced in the Court on 21.02.2012. Her statement was again recorded under Section 164 Cr.P.C, wherein, it was stated by her that she was subjected to rape by Ajay while staying at Delhi. Learned counsel for the petitioners also submits that there was an improvement in the statement of the prosecutrix and the subsequent statement was made due to pressure upon her by the police. This fact was investigated into by the police and the petitioners were found innocent during investigation. He further submits that the custodial interrogation of the petitioners is not required and no purpose would be served by sending them behind the bars. Learned counsel further submits that co-accused of the petitioners, namely, Ajay and his mother Raj Bala were also accused in the report under Section 173 Cr.P.C and they have been released on regular bail. He also submits that both the petitioners are government servants and irreparable loss would be caused to them.

Notice of motion.

Notice on behalf of respondent-State has been accepted by Mr. Bajinder Singh Virk, D.A.G., Haryana.

Learned counsel for the respondent-State submits that serious allegations are there against the petitioners and after summoning under Section 319 Cr.P.C., they are at par with other accused. He further submits that not only the details of mobile calls of the accused persons are there but one of the accused was on half day leave on the date of occurrence and keeping in view the seriousness of offence, the petitioners do not deserve concession of anticipatory bail.

Heard the arguments of learned counsel for the parties and have also perused the documents available on the file including the summoning order.

Admittedly, the petitioners were found innocent during investigation but subsequently, they were summoned under Section 319 Cr.P.C. The order of summoning has also been challenged in ***Criminal Revision No.2861 of 2015***, which has been dismissed after passing a detailed order.

A perusal of statement of witnesses and also the statement of the prosecutrix under Section 164 Cr.P.C, shows that there are direct/specific allegations against the accused petitioners that they have also participated in the commission of offence. It has also not been disputed that one of the accused took half day leave on the date of occurrence. Admittedly, the prosecutrix was 16 years of age and her consent is not relevant. Main accused Ajay has been released on regular bail but keeping in view the seriousness of offence and role of the present petitioners, no ground is made out to grant anticipatory bail to them.

The petition is accordingly dismissed.

However, in case, the petitioners appear before the trial Court and join the Court proceedings and also move an application for regular bail, the trial Court shall decide the same in accordance with law.

18.08.2015  
**gurpreet**

(DAYA CHAUDHARY)  
JUDGE