

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

CRM-M-40945-2015

Date of Decision: December 08, 2015

HARPREET SINGH

....PETITIONER

VERSUS

STATE OF PUNJAB

....RESPONDENT

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

Present: Mr. Sandeep Arora, Advocate,
for the petitioner.

Mr. P.S. Paul, DAG, Punjab.

NARESH KUMAR SANGHI, J

Prayer in this petition, filed under Section 439 Cr.P.C., is for grant of bail to the petitioner-Harpreet Singh, who has been booked for having committed the offences punishable under Sections 376-D and 506 IPC, arising out of FIR No. 65, dated 19.06.2015, registered at Police Station, Singh Bhagwantpur, District Rupnagar.

Learned counsel contends that initially the case of the prosecution was that the petitioner and his co-accused entered into the house of the prosecutrix and committed rape on her but during trial the prosecutrix (name concealed) did appear as PW-2 before the learned trial Court and suffered her deposition

(Annexure P-2), wherein, she has given a clean chit to the accused person. She had specifically denied with regard to commission of rape on her. It has also been contended that despite lengthy cross-examination by learned Additional Public Prosecutor conducting the trial, he was unable to bring anything in favour of the prosecution from the mouth of the prosecutrix. He further submits that except the Investigating Officer and the Judicial Magistrate, who had recorded the statement of the prosecutrix in terms of Section 164 Cr.P.C., the remaining witnesses have been examined in the Court as prosecution witnesses. Even if the whole case of the prosecution from the deposition of the prosecution witnesses is taken at its face value, then also the involvement of the petitioner for commission of the rape on the prosecutrix is not substantiated and as such, his further incarceration would be of no consequence in the present case.

Learned State counsel after going through the material available on the police file and after taking instructions from ASI Narinder Singh of Police Station, Singh Bhagwantpur, District Rupnagar, has opposed the grant of bail to the petitioner on the premise that in her statement recorded under Section 164 Cr.P.C. as well as statement suffered before the police, the prosecutrix had specifically named the petitioner as one of the

accused who committed gang rape on her and as such, on the basis of the said two statements, the petitioner can still be convicted. He further submits that during the cross-examination by learned Additional Public Prosecutor, the prosecutrix admitted the suffering of the statement under Section 164 Cr.P.C.

I have heard learned counsel for the parties and with their able assistance gone through the material available on record.

It is not in dispute that the prosecutrix has specifically denied the commission of rape on her. During the cross-examination, the learned Additional Public Prosecutor, had conducted the lengthy cross-examination but there is not an iota of word that petitioner committed rape on the prosecutrix. This Court has a doubt that the statement suffered under Section 164 Cr.P.C., can be used as substantive evidence against the petitioner. The Court is of the same view with regard to the statement suffered by the prosecutrix before the police. It is apposite to mention that the prosecutrix has specifically deposed before the Court that statement under Section 164 Cr.P.C. was suffered by her at the insistence of her family members. She denied making of the statement before the police.

Grounds on which the bail application of the petitioner has been dismissed by learned trial Court are not weighing with this Court.

In view of the totality of the facts and circumstances of the present case, the present petition is accepted and petitioner Harpreet Singh son of Mukhtiar Singh, resident of Village Goslan, P.S. Singh Bhagwantpur, Rupnagar is ordered to be released on bail subject to his furnishing bail bonds to the satisfaction of Chief Judicial Magistrate/Duty Magistrate, Rupnagar.

It is made clear that the observations made hereinabove, are for limited purpose for deciding the present petition.

December 08, 2015

ps-I

(NARESH KUMAR SANGHI)
JUDGE