

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

CRM M-41790 of 2014

Date of Decision : November 06, 2015

Naresh Kumar

.....Petitioner

VERSUS

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE T.P.S. MANN

Present : Mr. R.S.Mamli, Advocate
for the petitioner.

Mr. Praveen Bhadu, Asstt. A.G., Haryana.

T.P.S. MANN, J. (Oral)

This is the second petition filed by the petitioner for the grant of regular bail, the first one having been dismissed as withdrawn on 21.7.2014.

The petitioner, namely, Naresh Kumar is facing trial alongwith others on the allegations that on 9.12.2013 at about 11.00 a.m., Ramesh Kumar, Computer Teacher called complainant-Anil Kumar, aged 17 years and student of Government Senior Secondary School, Singhani, outside the class and told him that he had sent SMS message from his mobile by mistake to the petitioner who was his uncle. Ramesh Kumar started beating the complainant and rang up the petitioner. After the school hours when all the students had left the school, the complainant was made to sit there. In the meanwhile, the petitioner reached the gate of the school. Ramesh Kumar told him that the complainant was coming. The complainant after putting his school bag on a cycle came out from the school. The petitioner, who was standing at the gate made his cycle and school bag fall on the ground. In the meantime, two unknown

boys came on a motor cycle. The petitioner forcibly made the complainant to sit on the motor cycle and took him to his tubewell where he was administered liquor forcibly and confined in the room constructed at the tubewell. The unknown person opened the room and gave him slap and fist blows. Then another person came there with a wooden danda and gave 4/5 blows with the same on the complainant's back. On account of the pain, the complainant started crying. One of the accused gagged his mouth and did not allow him to cry. The unknown person, who had confined in the room, thereafter, committed unnatural act with him in the tubewell room. The petitioner pushed open the door by hitting his leg against the same and also warned the unknown person not to indulge in such type of activity. The unknown person, thereafter, brought the complainant on his motor cycle and left him in front of the school gate. The complainant reached home and apprised his father about the entire incident.

Learned counsel for the petitioner has submitted that complainant-Anil Kumar has since been examined as PW6 while his father Ram Singh as PW7. Both of them have not supported the prosecution case and after being got declared hostile, they have been cross-examined by the learned Public Prosecutor. It is further submitted that the petitioner is in custody since 19.12.2013. A number of prosecution witnesses are yet to be examined. There is no likelihood of the conviction of the petitioner, who was not attributed any serious role. Rather, it was the petitioner who had forcibly opened the door of the tubewell kotha and rescued the complainant. Therefore, he may be granted the concession of bail.

Learned State counsel has opposed the prayer made on behalf of the petitioner by submitting that serious allegations

were levelled by complainant-Anil Kumar while lodging the FIR. He was subjected to sodomy at the hands of co-accused of the petitioner. He has also submitted that out of the twenty three witnesses cited by the prosecution, seventeen have already been examined and only six witnesses are left to be examined. Learned State counsel, however, could not dispute the fact that the complainant and his father Ram Singh have not supported the case of the prosecution before the trial Court and were got declared hostile.

Without commenting on the merits, lest it may prejudice the case of either party, this Court is of the considered view that the petitioner deserves the concession of bail.

Resultantly, the petition is accepted. Bail to the satisfaction of the Chief Judicial Magistrate/Duty Magistrate, Bhiwani.

November 06, 2015
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(T.P.S. MANN)
JUDGE