

IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH

CRM-M-44099-2014

Date of Decision: January 29, 2015

Raj Kapur

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

Present: Mr. Jagjit Singh, Advocate,
for the petitioner.

Mr. Shilesh Gupta, Addl. AG, Punjab,
for the respondent.

NARESH KUMAR SANGHI, J. (Oral)

Prayer in this petition, filed under Section 439, Cr.P.C., is for grant of bail to the petitioner, Raj Kapur, son of Shinda, resident of Mothanwal, Police Station, Fattudhinga, District Kapurthala, who has been booked for having committed the offences punishable under Sections 366 and 376 read with Section 34, IPC, in a case arising out of FIR No. 7, dated 18.1.2014, registered at Police Station, Fattudhinga, Kapurthala.

Learned counsel contends that as per the prosecution

version, the prosecutrix (name not disclosed), aged about 23 years, was maintaining relations with Sukhwinder Singh (since deceased); the petitioner was friend of Sukhwinder Singh; both of them had taken the prosecutrix to the village of Sukhwinder Singh, where he (Sukhwinder Singh) had sex with her; on the wee hours of 18.1.2014, when the petitioner and Sukhwinder Singh were taking the prosecutrix on a motor-cycle to drop her at her village, then outside the village, the parents of the prosecutrix and other persons of the village met them and caused injuries to the petitioner and Sukhwinder Singh; both of them were treated in a government hospital where Sukhwinder Singh succumbed to the injuries; after several days the prosecutrix was produced before the Magistrate, where she suffered the statement under Section 164, Cr.P.C., alleging that the petitioner as well as Sukhwinder Singh (since deceased) had committed rape on her; after completion of the investigation, the charge-sheet was presented, the charges were framed and thereafter the prosecutrix appeared as PW-1, wherein she did not support her earlier version as stated in the statement under Section 164, Cr.P.C., and, as such, she was declared hostile after seeking permission from the learned Trial Court; in her cross-examination, the prosecutrix very fairly conceded that Sukhwinder Singh @ Sabhi (since deceased) had

assured to solemnize marriage with her and under that pretext he had committed intercourse with her and on the day of occurrence, nobody accompanied Sabhi and he was all alone; she further deposed that she did not know Raj Kapur present in the Court; and that she had seen him in the Court for the first time. He also submits that perusal of the deposition of the prosecutrix would further reveal that the statement suffered by her under Station 164, Cr.P.C., was under pressure of her parents and villagers. He further contends that there is no other evidence with the prosecution which would show that the petitioner had accompanied the prosecutrix and Sukhwinder Singh @ Sabhi on the day of incident and had sex with her without her consent and, as such, further incarceration of the petitioner is not of worth in the present case.

Learned counsel for the State has not controverted the facts narrated by learned counsel for the petitioner and very fairly conceded that the prosecutrix had turned hostile so far as the petitioner is concerned.

After hearing learned counsel for the parties and going through the material available on record, this Court is of the considered view that further incarceration of the petitioner is not of worth in the present case and, as such, the present petition is

allowed. The petitioner, Raj Kapur, son of Shinda, resident of Mothanwal, Police Station, Fattudhinga, District Kapurthala, is ordered to be released on bail during pendency of the trial of the present case subject to his furnishing bail bonds to the satisfaction of the learned Chief Judicial Magistrate/Duty Magistrate, Kapurthala.

January 29, 2015
Pkapoor

(NARESH KUMAR SANGHI)
JUDGE