

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

**Crl. Misc. No.M-14948 of 2016 (O&M)
Date of decision : 26.05.2016**

Mohammad Kadir

.....Petitioner(s)

Versus

State of Haryana

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

**Present: Mr. Vivek Khatri, Advocate
for the petitioner.**

Ms. Mahima Yashpal, AAG, Haryana.

**Jafrudeen – father of the complainant in person
with Mr. Saleem Ahmed, Advocate.**

ANITA CHAUDHRY, J.

The petitioner is seeking regular bail in FIR No.728 dated 15.10.2013, registered under Sections 363, 366-A, 376-D, 457, 380, 174-A IPC and 4/6 of POCSO Act, Police Station Nuh, District Mewat.

Counsel for the petitioner contends that the petitioner is in custody since 06.11.2015 and the prosecutrix has been examined and the case was adjourned on the last hearing since the complainant was yet to be examined and the prosecutrix is present in the Court today and she was also present on the last date of hearing and had made a statement. He further contends that the FSL report is against the prosecution as no semen was found.

The bail petition is opposed by the father, who is present today.

The State counsel also oppose the application for bail. It was urged that the

girl was only 14 years old and the allegations were that four boys had raped her and the police arrested two persons earlier and the girl had made a statement against the accused. It was urged that after the arrest of the petitioner, the prosecutrix has changed her statement and it is for the Court to see which statement has to be accepted and the consent does not matter as the girl is a minor. The State counsel submitted that the accused was declared proclaimed offender.

The counsel for the petitioner contends that the complainant did not want to accompany her father and she had made a statement Annexure P-3 and she was apprehending threats from her parents and was sent to Nari Niketan at Karnal.

A query was posed to the counsel for the petitioner as to whether they had mentioned the fact that the petitioner was declared a proclaimed offender. Counsel states that he was not aware of this fact nor he was briefed in this regard.

The petitioner was declared proclaimed offender. This fact has been concealed by the petitioner. On this very ground, the petitioner is not entitled to bail. Even otherwise, it is a case of kidnapping and rape of a minor. The prosecutrix, no doubt had made different statements at different point of time. The father of the complainant is present in the Court. An undertaking has been given by him that he would present himself for his statement on the next date i.e. 15.07.2016. It is for the trial Court to see which statement has to be accepted. The petition is dismissed. The trial Court is directed to expedite the trial and dispose off the trial within three months from the next date i.e. 15.07.2016.

26.05.2016

(ANITA CHAUDHRY)
JUDGE