

Criminal Misc. No. M- 18263 of 2017 (O&M)

Date of decision : September 14, 2017

Gautam alias Lekhraj

.....Petitioner

Versus

State of Haryana

....Respondent

CORAM:- HON'BLE MRS. JUSTICE LISA GILLPresent: Mr. Keshav Pratap Singh, Advocate
for the petitioner.

Mr. Anmol Malik, AAG, Haryana.

Mr. Johan Kumar, Advocate
for the complainant.

LISA GILL, J.

The petitioner prays for bail pending trial in FIR No. 70 dated 21.05.2016 under Sections 323, 452, 506 IPC, Sections 25, 54, 59 of Arms Act and Section 4 of Protection of Children from Sexual Offences Act, 2012 (Section 25 of Arms Act deleted later on) registered at Women Police Station Palwal, District Palwal.

It is submitted that the petitioner has been falsely implicated in this case. The petitioner and the complainant in fact had friendly relations. The FIR was registered under pressure of her parents. The victim refused to append her signatures on her statement before the learned trial Court on 20.04.2017. She was thereafter sent to Nari Niketan on her request as she expressed insecurity qua her parents. Order dated 20.04.2017 passed by the learned Additional Sessions Judge, Palwal reads as under:-

“ Statement of the victim (PW7) is recorded. When the victim was asked to affix her signature she has refused. She

was asked to disclose reason for not signing her statement but the victim does not assign any reason and accordingly, a note is appended at the end of her signature regarding refusal of the victim which is also duly signed by counsel for the complainant as well as counsel for the accused. No other PW is present.

At this stage, the victim has stated that she is not interested to go to the house of her parents as she apprehends threat to her life and liberty. The victim pleads that she be sent to some place of safe custody. Statement of the victim is recorded separately. Accordingly, the victim be sent to Nari Niketan, Karnal and she be kept there till further orders. Custody of the victim is handed over to L/C Pushpa 481 from Women Police Station, Palwal with direction to take the victim in safe custody to Nari Niketan, Karnal. Copy of the order be also supplied for intimation to the Incharge, Nari Niketan, Karnal.

Summons be now issued to all unexamined Pws except Dr. Ridhika Jain who shall be examined after FSL report from Madhuban is received. The accused be now produced on 20.05.2017.”

The victim, it is stated, addressed certain letters to the learned trial Court when she was lodged at the Nari Niketan, stating therein that she wishes to solemnise marriage with the petitioner.

Thereafter on an application by the victim's parents, her custody was again handed over to them on 01.06.2017. An application under Section 311 Cr.P.C. was moved for recalling the said victim. Consequent to the application under Section 311 Cr.P.C. being allowed, the victim was summoned again and her further cross examination was conducted on 31.08.2017. The victim on the said date, stated that on account of a mistake, her statement on 20.04.2017 could not be signed

though it was suffered voluntarily by her. Subsequent letters dated 18.05.2017 and 26.05.2017 addressed by her to the learned trial Court are stated to be a result of some blank papers being signed by her at the instance of an Advocate who used to visit to the Nari Niketan. Learned counsel for the petitioner submits that the victim herself is taking vacillating stands for reasons best known to her. Moreover, as per the FSL report dated 03.08.2017, the DNA profile of the petitioner does not match with the relevant samples of the alleged victim. The petitioner, it is submitted, is in custody since 28.07.2016. He is not involved in any other criminal case. The victim has already testified before the learned trial Court. It is, thus, prayed that this petition be allowed.

Certified copies of order dated 20.04.2017 as well as further cross examination of the victim recorded on 31.08.2017 are taken on record subject to just exceptions.

The factual position as above regarding the passing of order dated 20.04.2017, lodging of the victim at Nari Niketan, handing over of her custody to her parents on 01.06.2017 and subsequent recalling of the victim is not disputed by learned counsel for the State as well as complainant though it is contended that the victim has now supported the prosecution case. It is verified by learned counsel for the State, on instructions from ASI Mahabir Singh that the petitioner is not involved in any other criminal case.

There are no allegations on behalf of the State that petitioner is likely to abscond or that he is likely to dissuade the witnesses from deposing true facts in the Court, if released on bail.

No useful purpose shall be served by keeping the petitioner incarcerated any longer. Keeping in view the facts and circumstances noted above but without expressing any opinion on the merits of case, it is considered just and expedient to allow this petition.

Consequently, the petitioner be released on bail pending trial subject to his furnishing requisite bail bonds and surety to the satisfaction of the learned trial Court.

It is, however, clarified that the petitioner shall not try to contact the victim in any manner - directly or indirectly. Any infraction on the part of the petitioner may entail cancellation of his bail.

It is reiterated that none of the observations made herein above are a reflection on the merits of the case and shall have no bearing on the trial.

September 14, 2017
rts

(Lisa Gill)
Judge

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No