

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-18898 of 2017
Date of Decision: 25.07.2017

Sandip and others

...Petitioners

VERSUS

Central Bureau of Investigation

...Respondent

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Pardeep Kumar, Advocate
for the petitioners.

Mr. Sumeet Goel, Advocate
Retainer counsel for respondent-CBI.

SURINDER GUPTA, J.(Oral)

The present petition has been filed under Section 439 read with Section 482 of Code of Criminal Procedure for grant of regular bail to petitioners in case FIR No. RC-SI-2016-S-0009/CBI/SC-1/New Delhi dated 05.12.2016 registered for offences punishable under Sections 302, 325, 326, 459, 460, 376-D, 396 and 397 of Indian Penal Code (for short, "IPC"); 6 of Protection of Children from Sexual Offences Act; and 25 of the Arms Act.

2. Petitioners were arrested in this case for which FIR was registered at Police Station Tauru District Mewat for offences punishable under Sections 376D, 459 and 460 of Indian Penal Code; 25 of the Arms Act; and 6 of Protection of Children from Sexual Offences Act, 2012.

3. As per version in the FIR, occurrence took place on 25.08.2016, when complainant, who had come to her parents' house because of Eid festival, was sleeping in a room with her three cousins. Her uncle Jafaruddin and others were sleeping in the compound. She heard noise from

the compound side and found that 4/5 persons out of whom two were wearing underwear and vest and remaining persons, who were wearing pant-shirt, came inside their room. They took their *dupattas* and tied complainant's uncle Jafaruddin and others sleeping in the compound with cots and gave them beatings with *dandas* and iron rods. Thereafter, they came to their room and committed rape with complainant and her cousin. They enquired about jewellery and cash. One of the assailants was having a country made pistol. They searched boxes lying in the room; emptied the tank in which grain was stored and then bolted all the girls inside the room. While going, they took away their motorcycle. They stayed in the house from 12.00 a.m. to 03.00 a.m. One of her relative succeeded in slipping away and informed maternal grandfather of complainant, who alongwith Imran came to spot, untied complainant's uncle and other persons and reported the matter to police. Injured were taken to hospital, where Rashidan w/o Ibrahim and Ibrahim died.

4. The police investigated the case but later on vide letter dated 20.09.2016 written by Additional Chief Secretary to Government of Haryana, Home Department to Government of India, request was made to hand over investigation of the case to CBI. CBI registered case bearing FIR No. RC-SI-2016-S-0009/CBI/SE-I on 05.12.2016. Petitioners were arrested in this case on 28.08.2016 and were subjected to test identification parade.

5. Learned counsel for petitioners while seeking bail for all the petitioners has argued that incident, in which two persons were murdered, two girls were raped and injuries were caused to family members of complainant, was presented by media as sensational case by giving it a communal colour. The police has conducted DNA test of petitioners which

did not match with semen found on clothes of prosecutrix. Nothing could be found against petitioners in their lie detection test. There is no report that finger prints lifted from the spot tallied with finger prints of petitioners. No weapon or any stolen article was recovered from petitioners and there is no evidence to connect them with the occurrence. Petitioners were called to Police Station to join investigation and were arrested when they had themselves gone there. Keeping in view above facts he seeks regular bail for petitioners.

6. Learned counsel for respondent-CBI has argued that the question is not of media trial of the case. During test identification parade, prosecutrix have identified petitioners. Statement of one Parvez was also recorded wherein he has stated that petitioners used to come to shop of his maternal uncle (name withheld) and their behaviour with him was very bad. They used to take goods from the shop and never made payment to him. He had also identified petitioners at the time of occurrence. Petitioners were named by Jafru, Naved who identified them at the time of occurrence. Further investigation in the case is still under progress. CBI is collecting other evidence like comparison of finger prints, DNA etc. Keeping in view the gravity of offence, petitioners are not entitled to bail.

7. It is a case where assailants entered house of complainant, gave beatings to male members, which resulted in death of two persons, and committed rape with two girls. In the test identification parade, petitioners were identified by both the prosecutrix. Besides their statement, one of the family member and two other witnesses have named them. Trial of the case is in progress. Grant of bail to petitioners at this stage will certainly effect the case of prosecution. Even if media has created a hype about the incident,

the same cannot be taken as a reason for false implication of petitioners in this case. The media if had highlighted the incident, the same was only for information of general public. Test identification parade of petitioners was conducted and direct oral evidence has also been collected about their involvement in this case.

8. Learned counsel for petitioners has argued that test identification parade conducted in this case has no meaning as photographs of petitioners were already in media before conducting their test identification parade.

9. At this stage, it will not be appropriate to comment on above submission of learned counsel for petitioners as the same is subject to evidence that may be produced by the prosecution and in defence. Plea of learned counsel for petitioners require corroboration by material evidence, which will be tested by trial Court while scrutinizing its evidentiary value. Keeping in view the fact that petitioners have been identified by prosecutrix in test identification parade and have also been named by prosecution witnesses, I find no reason to extend the benefit of regular bail to them at this stage.

10. The instant petition has no merit and the same is dismissed.

July 25, 2017

jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No