

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

Criminal Misc. No. M- 4471 of 2017 (O&M)

Date of decision : September 20, 2017

Rahul

.....Petitioner

Versus

State of Haryana

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. R.K. Hooda, Advocate for the petitioner.

Mr. Anmol Malik, AAG, Haryana.

Mr. Arun Singal, Advocate for the complainant.

LISA GILL, J.

The petitioner prays for bail pending trial in FIR No. 119 dated 08.06.2016 under Sections 365, 323, 342, 506 IPC and Section 4 of Protection of Children from Sexual Offences Act, 2012 registered at Police Station Israna, District Panipat.

It is contended that the petitioner has been falsely implicated in this case. The victim, in this case, it is submitted came to the petitioner's house on 07.06.2016 at about 10.00 p.m on her own. She refused to go back to her parents home and was ultimately recovered from the petitioner's home on the intervening night of 08/09.06.2016.

Learned counsel for the petitioner refers to the statement of the victim recorded under Section 161 Cr.P.C. on 09.06.2016 (Annexure P-1) when she was recovered. The victim stated that she used to have telephonic conversations with the petitioner. She went to meet him at his house on 07.06.2016 as he had called her. Thereafter, he came back to drop her back at her residence at about 3.00 a.m.(i.e. morning of 08.06.2016). The

petitioner after dropping her, returned to his home. It is stated that the victim, however, got frightened and went back to the petitioner's house. The petitioner asked her to go back but she started weeping. He, thus, allowed her to stay in his house. Next day, the police recovered her from the petitioner's home and took them to the police station. The victim further stated that the petitioner has not done anything wrong with her and she does not wish to state anything more. The victim's statement under Section 164 Cr.P.C. recorded on 09.06.2016 itself (Annexure P-2) is to the same effect. The victim further refused to have her medical examination conducted while recording that no wrong had been committed with her and she did not want her medical examination conducted. She stated that this refusal was out of her own free will and without any kind of pressure.

It is submitted that two days later i.e. on 11.06.2016, an application was moved in a curious manner for conducting of medical examination of the victim. In the said application submitted on 11.06.2016 for conducting of medical examination, the victim stated that her date of birth was 14.09.2002 and on the night of 07.06.2016, she left her home at the beckoning of some anti-social boys (gunda type ladke) who threatened her. It is further stated that she was beaten and her person was violated throughout the night by the said anti-social persons. She was recovered in the evening of 08.06.2016. When she was kept confined, she was threatened not to give any statement against the said persons. Her father was threatened at the police station itself that in case any statement was given against them, she would be picked up again. Due to this reason, she had suffered the earlier statements and refused to undergo the medical examination. The

victim at the end of the application mentioned that the petitioner – Rahul, Rakesh and Vicky committed rape upon her. Her medical examination was thereafter conducted.

As per Medico Legal Report dated 15.06.2016 (Annexure P-4), no injury – external or internal was found present on the victim's person. Hymen was found to be old and torn. The police on investigation found the allegations against the co-accused Vicky and Rakesh to be incorrect. They were placed in column No. 2 of the final report under Section 173 Cr.P.C. Examination-in-chief of the victim was conducted on 29.11.2016. Her cross examination was deferred as an application under Section 319 Cr.P.C. for summoning the co-accused Vicky and Rakesh was moved.

Learned counsel for the petitioner vehemently argues that the evidence on record is doubtful. The victim herself, at the outset, stated that no wrong act was committed with her and she had proceeded to the petitioner's house out of her own free will and accord. Learned counsel for the petitioner while pointing out to the medical evidence on record argues that falsity of the prosecution version is apparent from the same. The absence of any injury on the person of the victim negates the allegations of gang rape by three persons. Even though the medical examination was conducted a week after the alleged incident, injuries on her person would have been detected especially keeping in view the fact that she has levelled specific allegations of physical abuse in her application dated 11.06.2016. Moreover, examination-in-chief of the victim has already been conducted. Application under Section 319 Cr.P.C. for summoning the other two co-accused has been allowed and there would necessarily be a de-novo trial.

The petitioner, it is submitted, has been in custody since June, 2016. He is

not involved in any other case. It is, thus, prayed that this petition be allowed.

Learned counsel for the complainant with equal vehemence has opposed this petition while submitting that the victim, in this case, had actually been recovered on the evening of 08.06.2016. She was kept in illegal confinement at the police station for the whole night and her statements under Sections 161 and 164 Cr.P.C. were recorded on the next day. It is due to threat and pressure that the victim at the first instance could not reveal true facts.

Learned counsel for the complainant points out to the observations of the investigating agency while finding the co-accused innocent, that the victim was recovered from the petitioner's house on 08.06.2016. It is further submitted that there is a cutting on the date of the site plan prepared at the spot. The said document is a part of the challan. It is, thus, prayed that this petition be dismissed.

It is to be noted that on a direction of this Court, report dated 20.07.2017 by the Superintendent of Police, Panipat was filed. It is mentioned that the preliminary inquiry in respect to the cutting/over writing in the date on site plan etc. was conducted. It is affirmed that in view of the entirety of the situation and documents on record, the victim, in this case, was in fact recovered from the petitioner's house at village Brahman Majra on 09.06.2016 itself in the presence of the victim's mother. Signatures of the victim's mother are available on the said recovery memo dated 09.06.2016. Statement of the victim was recorded on 09.06.2016 before the lady Advocate and the learned Judicial Magistrate First Class, Panipat as well. The victim was sent for medical examination but she refused to undergo

medical examination out of her own free will. The custody of the victim was handed over to her parents on 09.06.2016. It is submitted that the over writing/cutting on some of the papers, which in any case does not reflect the recovery of the victim on 08.06.2016, is, however, being inquired into and necessary action would be taken against the person concerned. It is affirmed that the recovery of the victim was effected on 09.06.2016.

Learned counsel for the petitioner submits that over writing pointed out on the site plan prepared at the spot reflects that the date earlier mentioned has been changed to 08.06.2016. This over writing by itself cannot in any manner prove the averments raised by the victim at a later stage. Moreover, the FIR in this case has been registered on 08.06.2016 at 10.44 p.m. (22.44 hours) on a statement of the complainant that his daughter was missing. The victim was admittedly recovered on the next day.

Though learned counsel for the State has opposed this petition while submitting that the victim, in this case, is minor, it is not denied that the petitioner is not involved in any other criminal case and has been in custody since June, 2016. 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.

I have heard learned counsel for the parties at length and have gone through the file as well as final report under Section 173 Cr.P.C. furnished in Court, including the site plan prepared at the spot and the medical evidence.

It is not in dispute that the victim at the outset has not levelled any allegations against the petitioner. She stated that she went to his house on her own accord. Despite having been dropped back at her house, she yet

again returned to the petitioner's house. She was ultimately recovered therefrom. In her subsequent statement recorded on 11.06.2016, the victim stated that she left her home on being called by some anti-social boys (gunda type ladke) being subjected to threats by them. She was physically abused and raped by all the three boys, recovered on the evening of 08.06.2016, kept confined in the police station and thereafter produced before the Magistrate on 09.06.2016. The victim stated that she could not bring these facts to light earlier due to threats and pressure exerted on her. Medical examination was also refused on 09.06.2016 due to this reason. Medico legal report dated 15.06.2016 does not reveal any injury on the person of the victim. Site plan prepared at the spot indeed carries an overwriting in the date reflecting it to be changed to 08.06.2016.

I do not deem it appropriate to deliberate on the facts of the case at length lest it prejudice the case of either the accused or the prosecution. Needless to say all these facts are before the learned trial Court, which shall consider the effect or otherwise thereof while finally adjudicating upon the matter. No useful purpose shall be served by keeping the petitioner incarcerated any longer.

Keeping in view the facts and circumstances of the case above but without expressing any opinion on the merits thereof, it is considered just and expedient to allow this petition. Consequently, the petitioner be released on bail pending trial subject to his furnishing heavy 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 or any of her family members 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 20, 2017
rts

(Lisa Gill)
Judge

Whether speaking/reasoned :	Yes/No
Whether reportable :	Yes/No