

Criminal Misc. M- No. 8337 of 2017 (O&M)

Date of decision : July 25, 2017

Gurmeet

.....Petitioner

Versus

State of Haryana

....Respondent

CORAM:- HON'BLE MRS. JUSTICE LISA GILLPresent: Mr. Jitender K. Sehrawat, Advocate
for the petitioner.

Mr. Sanjay K. Saini, AAG, Haryana.

LISA GILL, J.

The petitioner prays for bail pending trial in FIR No. 209 dated 19.07.2016 registered under Sections 346, 363, 366A, 376 (2)(n), 376D IPC and Section 6 of Protection of Children from Sexual Offences Act, 2012 at Police Station Barwala, District Hisar.

It is submitted that the petitioner has been falsely implicated on the basis of the statement made by the father of the alleged victim. It is contended that the petitioner and the alleged victim had friendly relations. They are well known to each other since a number of years. In fact, they are neighbours. The victim's aunt is working with the police department as is admitted by her before the learned trial Court.

Moreover, the victim has given contradictory and improbable statements. Learned counsel submits that it is highly improbable that the person of the victim could be violated at the railway station as alleged. Furthermore the victim stated that she was sleeping with her family at her residence on the intervening night of 17/18.07.2016. She went to the

washroom at about 11.30 p.m. The petitioner who was allegedly inside her house, gagged her and dragged her all the way to his house where his mother put a vial on her face. The victim allegedly lost consciousness and on regaining the same found herself at the railway station at Bhiwani on the next day (18.07.2016) at 9.00 a.m. It is equally unbelievable that the petitioner could have managed to enter the victim's home and whisk her away while her whole family was admittedly present in the house. The petitioner, it is stated by the victim, received a call from her (victim's) aunt that his parents were being held by the police. Accordingly, the petitioner left the railway station after administering some intoxicant substance to her. In her cross examination, the victim states that she was left at the Hisar railway station. The victim alleges that when she regained consciousness in the evening she found herself in the company of the petitioner and other co-accused who violated her person. However, in her cross examination the victim reveals that she remained with the co-accused for the whole day on 19.07.2016 and became semi-conscious in the evening when the co-accused gave some intoxicant. A certified copy of the statement of the victim, PW4 produced in Court today is taken on record subject to just exceptions.

It is further submitted that allegations against the petitioner are falsified by the Medico Legal Report (Annexure P-2), the relevant part whereof reads as under:-

“No external marks of injury found on EXT. Genital, pubic hair non matted. No bleeding/spotting on vaginal discharge. Hymen intact and vaginal swab taken and handed over to police.”

It is argued that in view of the abovesaid medical examination report the presence of semen on the underwear and salwar of the victim by itself is of no aid to the prosecution when it is not found on the swabs etc. taken from the person of the victim. Moreover, the alleged victim in this case has since testified before the learned trial Court. It is pointed out that the victim in her statement before the learned trial Court has admitted that she knew the petitioner since the last eight years. The petitioner, it is submitted, is in custody since 22.07.2016. It is, thus, prayed that this petition be allowed.

I have heard learned counsel for the parties and have gone through the file with their able assistance.

Learned counsel for the State while opposing this petition argues that there are specific allegations raised against the petitioner. The victim, a minor, has specifically stood by the allegations levelled by her. Thus, the element of consent, if any, on the victim's part is irrelevant. However, the medico legal report (Annexure P-2) is not denied. It is not denied that no injury was found on the person of the victim. It is affirmed that the victim, in this case, has since testified before the learned trial court. Her statement has been recorded. The petitioner is not involved in any other criminal case. Trial, in this case, is not likely to conclude in the near future.

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 bonds to the satisfaction of the learned trial Court.

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.

July 25, 2017
rts

(Lisa Gill)
Judge

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No