

Criminal Revision No. 2774 of 2017 (O&M)

Date of decision : December 19, 2017

Arjun

.....Petitioner

Versus

State of Haryana

....Respondent

CORAM:- HON'BLE MRS. JUSTICE LISA GILLPresent: Mr. Kunal Dawar, Advocate
for the petitioner.

Mr. Ramesh Kumar Ambavta, AAG, Haryana.

LISA GILL, J.

The petitioner being aggrieved of orders dated 29.07.2017 passed by learned Additional Sessions Judge, Palwal as well as order dated 21.07.2017 passed by learned Principal Magistrate, Juvenile Justice Board, Palwal, whereby bail to the petitioner (juvenile) has been declined, has filed the present revision petition. It is submitted that allegations of the petitioner having committed rape upon the victim as mentioned in FIR No. 52 dated 01.05.2017 are patently incorrect as is reflected in the statement of the victim herself under Section 164 Cr.P.C. (Annexure P-4). It is pointed out that even if the allegations in the statement under Section 164 Cr.P.C. are taken to be correct, the same does not amount to an offence punishable under Section 376 IPC. Moreover, the victim, in this case, it is submitted was medico legally examined on the same day i.e. on 01.05.2017. As per the said medico legal reports (Annexures P-2 and P-3), no offence punishable under Section 376 IPC is made out. When the victim was taken for medico legal examination at the first instance, she has refused to have her internal medical examination conducted. The victim was thereafter taken again for

medical examination and she gave her consent for internal examination. Both the medico legal reports are attached as Annexures P-2 and P-3 respectively.

As per the medico legal report attached as Annexure P-2, it is mentioned as under:-

“ Patient is giving H/o of only touch her private part by single male (Arjun) on 29.04.2017 around 1.30 p.m. She also giving H/o kissing (multiple times) on lips. No H/o penetration given. No H/o torn clothes given. No H/o change of clothes given.

Thin Built.

Unmarried.

Whole body examination : No sign of external injury seen.

Breast : No sign of external injury seen.

Perineum-- Pt. refused for internal medical examination.

As per medical report attached as Annexure P-3, it is mentioned as under:-

“A/H/O sexual and physical assault by a male on 29.04.2017 at around 1:00 p.m. by one male person. (Arjun) per vaginally. She is giving H/O touching and kissing and no A/H/O penetration. No H/O torn clothes. She is not wearing the clothes which she was wearing during the time of assault. She is conscious, oriented to time, place and person.

(1)Built – thin

(2)Unmarried

(3)General physical examination -

No injury seen anywhere on the body. No old or new scar mark.

(4)Perineal examination – P/S Hymen – Intact - No bleeding discharge

(5)Swabs:-

One vaginal swab taken and sealed with single seal for seminal analysis.

One vaginal swab taken and sealed with single seal for DNA analysis.

One vulvar swab taken and sealed with single viral and sent for sinunal analysis.

The petitioner, it is submitted, is a juvenile and is not involved in any other criminal case. His release is not likely to bring him into association with any known criminal or expose to him moral, physical or psychological danger and the ends of justice would not be defeated. It is, thus, prayed that this revision petition be allowed.

Learned counsel for the State is unable to deny the medico legal examination or the statement of the victim under Section 164 Cr.P.C.. This petition is, however, opposed on the ground that serious allegations are levelled against the petitioner and the victim is also a minor.

Heard, learned counsel for the parties.

There is no allegation that the petitioner is likely to come into contact with any known criminal or be exposed to moral, physical or psychological danger. The petitioner is not reported to involved in any criminal case.

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, orders dated 29.07.2017 passed by learned Additional Sessions Judge, Palwal as well as dated 21.07.2017 are set aside and the petitioner be released on bail 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/any of her family members or any of the witnesses of the case in any manner - directly or indirectly. Any such infraction on the part of the petitioner shall 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.

December 19, 2017
rts

(Lisa Gill)
Judge

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No