

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

CRM-M-17537-2018

Date of decision:-3.10.2018

Wasim

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. R.S. Mamli, Advocate
for the petitioner.

Mr.Gaurav Bansal, AAG, Haryana.

H.S. MADAAN, J. (Oral)

This petition has been filed for the grant of regular bail to the petitioner – Wasim, an accused in FIR No.598 dated 12.10.2017, under Sections 120-B, 342, 363, 366, 376, 506 IPC, registered at Police Station City, Yamuna Nagar.

Briefly stated, the facts of the case, as per prosecution version are that the FIR in question was recorded on the basis of written complaint submitted by the the prosecutrix (name withheld to protect her identity in view of Section 228-A IPC and as per the directions given by the Hon'ble Apex Court Court in case titled State of Karnataka Vs. Puttaraja, 2004(1)

RCR(Cri.) Supreme Court, 113 (SC) and referred to as *the prosecutrix*) daughter of Kamal Kaushik, resident of Ashok Gali, Anand Colony, Purana Hamida, Yamuna Nagar, in which she stated that accused Wasim has been residing in front of her house and she had been on talking terms with him; that a few days earlier, he by sitting besides her took her photographs and thereafter started blackmailing her asking her to develop relations with him; the prosecutrix under threat of blackmail kept quiet; that Wasim called her to his house and committed rape on her repeatedly on several occasions, lastly on 13.9.2017 at night; that on 30.9.2017 at night when prosecutrix went to the house of Wasim, then she came across one Ashraf, who threatened to inform her parents, otherwise she should pillion ride on his motorcycle; the complainant refused but Ashraf made her sit on his motorcycle and took her to Saharanpur; that she was kept in a house; on the next day Ashraf along with his brother Matlu and Matlu's wife Nazia along with one Gullo went to the prosecutrix and took her signatures on various papers by exerting force upon her; then they took her to Saharanpur Court; she was brought back and kept in a house, which used to be locked all the time; that Ashraf was to take her to Allahabad to marry her; that one day finding an opportunity, the prosecutrix escaped from that place, informed her family and her father came along with the police.

On the basis of said complaint, formal FIR was registered. The investigation in the case started. Accused were arrested in this case. After completion of investigation, challan against the accused has been prepared and filed in the Court and the trial against the accused is going

on. He had moved an application for regular bail in Court of Sessions at Yamuna Nagar at Jagadhri but was unsuccessful as the same was dismissed vide order dated 22.3.2018 passed by learned Additional Sessions Judge (Exclusive Court for Heinous Crimes Against Women and Children), Yamuna Nagar at Jagadhri, as such, he has approached this Court for grant of the similar relief.

Notice of the petition was given to the State and State counsel has put in appearance.

I have heard learned counsel for the petitioner and learned State counsel besides going through the record.

During the course of trial, the statement of the prosecutrix was recorded as PW3, wherein she did not support the prosecution story at all and rather stated that she is 20 years old and on 30.9.2017, she had gone to Saharanpur in search of some job without informing her parents and she returned to her house after 12 days. She further stated that she was having friendly relations with accused Wasim and she along with accused Ashraf and Wasim went to Saharanpur in search of job, where they stayed in a house of Matloob; that Mustkim is also friend of accused Ashraf; that Gullo is wife of accused Amir so called brother of accused Ashraf. She stated that Ashraf and Wasim did not commit any bad act with her and the other accused had not taken her to Saharanpur Court and had not compelled her to put signatures on blank papers. They did not extend any threat to her. She was declared a hostile witness at the instance of Public Prosecutor and the Public Prosecutor was allowed to put questions to her in the form of cross-examination but without any fruitful result.

It being so, the star witness of the prosecution having let it down that cause a severe jolt to the case of prosecution, though the trial Court is yet to give its verdict keeping in view the totality of the evidence brought on the record in light of the facts and circumstances of the case but I find that it shall be in the fitness of things, if the petitioner is granted benefit of bail since statement of crucial witness, the prosecutrix has already been recorded and conclusion of the trial is likely to take some time and further the culpability of the accused shall be determined during the trial.

Accordingly, the petition is allowed. The petitioner be admitted to bail during the pendency of the trial, subject to his furnishing bail bonds and surety bonds to the satisfaction of the trial Court/Chief Judicial Magistrate, Yamuna Nagar at Jagadhri, subject to the following conditions:

- (i) he shall appear in the Court on each and every date of hearing;
- (ii) he shall not give any threat or intimidation to the prosecution witnesses;
- (iii) he shall not leave India without prior permission of the Court.

In addition to that the trial Court may impose any term and condition found suitable to ensure that the petitioner does not abscond and interfere in the trial.

In case the petitioner violates any term and condition on which the bail has been granted to him, the prosecution would be entitled

to apply for cancellation of bail.

This petition stands allowed accordingly.

3.10.2018

Brij

(H.S. MADAAN)

JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No