

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

Criminal Misc. No. M- 21879 of 2017 (O&M)

Date of decision : April 03, 2018

TarifPetitioner

Versus

State of HaryanaRespondent

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Sunil Panwar, Advocate
for the petitioner.

Mr. Ramesh Kumar Ambavta, AAG, Haryana.

Mr. Himmat Singh Deol, Advocate
for the complainant.

LISA GILL, J.

Prayer in this petition is for grant of anticipatory bail to the petitioner in FIR No. 49 dated 21.05.2017 under Section 506 IPC and Section 4 of Protection of Children from Sexual Offences Act, 2012 registered at Women Police Station Nuh, District Nuh.

It is submitted that the petitioner has been falsely implicated, in this case, registered at the instance of the father of the alleged victim. As per the allegations in the FIR, the complainant's daughter aged about 14 years was raped by the petitioner about four months prior to the registration of the FIR. The complainant stated that he remained out of the village for labour work and came to his village once in a month. The ladies look after the fields. A few days prior to registration of the FIR, the complainant's wife called him and asked him to come home. She revealed to the complainant that their daughter had been raped by the petitioner about four months ago

when she had gone for irrigating the fields. Fields of the petitioner are adjacent to the fields of the complainant. They used to use water from the tubewell of the petitioner. It is alleged that the victim went inside the room to the tubewell to switch off the same. The petitioner came inside the room, bolted it and committed rape upon her. He threatened her not to reveal the incident to anyone or he would kill her. The complainant, it is stated, went to complain about this to the petitioner's father, who also threatened to kill him, if he initiated any action. On these allegations the above said FIR was registered.

Learned counsel for the petitioner vehemently argues that the unexplained delay of four months in lodging of this FIR reveals the falsity of the same. The petitioner has been falsely implicated due to party faction in the village. A panchayat was convened in this respect and about hundred persons of the area appended their signatures on the representation (Annexure P-2) wherein it is mentioned that the petitioner is not concerned with the offence in question. It is further submitted that during investigation, it has been found that at the alleged place of occurrence, there is no room or even an electricity connection. It is further contended that in an absolutely mala fide manner, allegations were subsequently raised that the victim got pregnant after the incident in question. No such allegation has been raised in the FIR or even in the statement of the victim under Section 164 Cr.P.C. recorded on 24.05.2017. It is contended that reliance by the prosecution on the ultrasound report conducted at Nuh on 21.04.2017 is of no avail especially keeping in view the prescription of the Doctor at Devyani Hospital, Alwar on 26.04.2017 wherein it is stated that an ultrasound was advised to confirm pregnancy but the patient refused. In this situation it is

urged that a doubt is cast about the report dated 21.04.2017 being of the alleged victim. Moreover, the allegation that the said pregnancy was terminated is not borne out from the record. It is further submitted that even if ultrasound report dated 21.04.2017 is taken to be correct, gestation age of the foetus is mentioned to be twenty weeks, which itself demolishes the prosecution version that rape was committed by the petitioner four months prior to the registration of the FIR. It is further pointed out that earlier FIR No. 306 of 2015 had been registered against the petitioner's younger brother at the behest of the complainant party. The petitioner has joined investigation. He undertakes to face the proceedings and co-operate with the investigating agency in every manner. It is, thus, prayed that this petition be allowed.

Learned counsel for the complainant and the State have opposed this petition while submitting that specific allegations have been levelled against the petitioner, however, it is not denied that the FIR in question was registered four months after the occurrence in question. The factum of the pregnancy and abortion has not been mentioned in the FIR and in the statement of the victim under Section 164 Cr.P.C. as the requisite reports, it is submitted, were not available with them at that time.

Learned counsel for the State, on instructions from ASI Saroj, verifies that at the alleged place of occurrence, no room (Kotha) was found constructed around the tubewell, neither was any electricity connection present on the spot. Photographs of the alleged spot have been produced in Court today. Learned counsel for the State, on instructions from ASI Saroj, verifies that the petitioner has joined investigation and he is not involved in any other criminal case. Needless to say the evidence shall be considered

by the investigating agency/trial court at the relevant stage. No opinion is expressed thereon.

There are no allegations on behalf of the State that the 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.

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, order dated 28.07.2017 is made absolute.

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.

It is clarified that the petitioner shall not try to contact the victim or any of her family members in any manner - directly or indirectly. Any such infraction on the part of the petitioner shall entail cancellation of his bail.

April 03, 2018
rts

(Lisa Gill)
Judge

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No