

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Misc. No. M-26761 of 2018 (O&M)
Date of decision : December 07, 2018

Ashish @ Ashu

....Petitioner

versus

State of Haryana

....Respondent

Coram: Hon'ble Mr. Justice Fateh Deep Singh

Present : Mr. Surender Saini, Advocate, for the petitioner
Mr. Baljinder Virk, Sr. DAG Haryana

Fateh Deep Singh, J. (Oral)

This order shall dispose of regular bail application under Section 439 Cr.P.C. of accused Ashish alias Ashu filed in case FIR No.301 dated 23.7.2017 under Sections 328, 363, 506, 34, 120-B, 366A, 376 IPC and Section 6 of the POCSO Act, 2012, registered at Police Station Civil Lines, Sonapat.

The brief facts that are brought to the notice of the Court are that on 23.7.2017 at about 12.15 AM Umesh Sharma got recorded the present FIR against unknown persons alleging that his

daughter aged around 16 years had gone for tuition on 22.7.2017 around 3 PM and did not return home. In spite of their best efforts they could not trace her and suspected that some unknown persons had kidnapped and confined her. Subsequently upon tracing of the girl she made statement before the police that on the alleged date her friend Ashish present petitioner met and showed his inclination to talk to her and on his asking she sat in his car and thereafter accused telephoned his friend who too arrived and when the prosecutrix tried to get out of the car she was forced into it. The girl was thereafter taken to Vipin younger brother of the petitioner in Chandigarh and on the way she was made to drink cold drink and thereafter she lost her consciousness and found herself in a dark room where there were two three other persons. The girl alleged that Ashish committed rape upon her against her wishes. She discovered the names of others as Ashish, Vipin, Ravi, Amar and Rakesh who helped the petitioner in confining her for that purpose. Subsequently, her statement under Section 164 Cr.P.C. was also recorded before learned Judicial Magistrate wherein she levelled allegations against other accused as well having ravished her. The petitioner was arrested on 24.7.2017.

Mr. Surender Saini counsel for the petitioner has argued that the petitioner has already undergone imprisonment for more

than one year and four months and that the very stand of the prosecutrix has been changing throughout the proceedings and initially missing report was got lodged by the father and that the prosecutrix claims herself that she had roamed with accused at number of places and story of prosecution has become un-plausible and in her statement before the court as prosecution witness has implicated the entire set of the accused regarding the allegations of having raped her and therefore, argued that since co-accused have been allowed bail by this Court, the petitioner too deserves this concession.

On behalf of the State the bail application is supposed to be opposed, has been opposed by Mr. Baljinder Virk, Sr. DAG, Haryana on the grounds of heinousness of the offence and seriousness of the crime. It is submitted that minor girl being initially under shock might have given some different versions but the role of the present petitioner since the inception till the end is not suspected and in view of heinousness of the offence has sought the dismissal of the prayer for bail.

Appreciating the submissions it is by no means put to dispute that the victim is a minor girl aged around sixteen and a half years at the time of occurrence. The question of parity qua accused Amar and Vipin @ Bhandari does not stands attracted as specific

observations have been made by this Court that there was no specific allegations levelled regarding the rape against them. The medical evidence brought on the record and her statement before the learned Judicial Magistrate are matters of much relevance. Mere incarceration in view of seriousness of the offence is no extenuating circumstance for the grant of bail. Without feeling the necessity to further advert on the merits else it might prejudice the parties at the trial, this Court does not feels inclined to allow bail to the present petitioner. No case for grant of bail is made out. The same as such is dismissed.

Deceber 07, 2018
'tiwana'

(Fateh Deep Singh)
Judge

<i>Whether speaking/reasoned ?</i>	<i>Yes/No</i>
<i>Whether Reportable ?</i>	<i>Yes/No</i>