

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

CRM-M-26836-2018

Date of decision:-16.8.2018

Devender @ Kala

...Petitioner

Versus

State of Haryana

...Respondent

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

Present: Mr. Vikram Singh, 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 – Devender @ Kala, an accused in FIR No.555 dated 16.10.2017, under Section 376 IPC, registered at Police Station Kharkhoda, District Sonipat.

Briefly stated, the facts of the case as per prosecution version are that complainant (name not being mentioned to conceal her identity and referred to as '*the victim*') wife of Sanjeev Kumar, resident of Kharkhoda presently tenant house of Purse Ram, Lumberdar Saini, Ward No.13, Kharkhoda had submitted a written complaint addressed to SHO, Police Station Kharkhoda submitting therein that she has been working as a Sweeper in village Sisana; that on 16.10.2017 when she returned home after doing her duty, she had called Devender @ Kala accused to

her house for taking Rs.1,000/- as loan; that Devender @ Kala had come to her house and told the complainant that bahi money had not been received from Chattisgarh; that he came there again after some time when children of complainant had gone out to take tuition and she was all alone at home; that the complainant asked Devender @ Kala about money to which he stated that money had not been received, however, he gave a push to the complainant, put her on bed, broke string of her *salwar*, pushed her mouth with his hand; that the complainant resisted, in the process her bangles broke down and she suffered injuries in her hand; that Devender @ Kala had forcible sexual intercourse with the complainant; that the complainant informed the police and police came, however, the complainant stated that she would submit the complaint when her husband returned home; that thereafter she accompanied by her husband went to police station and submitted a written complaint there. On the basis of that written complaint, formal FIR was registered. Accused was arrested in this case on 17.10.2017. After completion of investigation and other formalities, accused was challaned. He had moved an application for regular bail but the same was declined by Additional Sessions Judge/Special Judge, Sonapat vide order dated 2.6.2018, as such, he has approached this Court with same request.

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

I have given a thoughtful consideration to the rival contentions besides going through the record.

During the course of trial, statement of the

prosecutrix/complainant was recorded, copy of which has been placed on record, wherein she has not supported the case of prosecution, rather she stated that nothing had happened with her; that she does not know accused Devender @ Kala present in the Court and he never committed rape upon her. She denied accused Devender @ Kala having broken the string of her salwar or she having moved any application to the police. She was declared a hostile witness at the instance of Public Prosecutor and Public Prosecutor was allowed to put questions to her in the form of cross-examination. However, she did not toe the line of prosecution in her cross-examination. The complainant/prosecutrix is aged about 30 years. The star witness for the prosecution having let it down and now the trial is pending for recording statements of other prosecution witnesses, the depositions of which are of corroborative nature only.

Under the circumstances, I find it proper and appropriate if concession of regular bail is granted to the petitioner.

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, Sonapat, subject to the following conditions:

- (i) that he shall appear in the Court on each and every date of hearing;
- (ii) that he shall not give any threat or intimidation to the prosecution witnesses; and
- (iii) that 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.

16.8.2018

Brij

(H.S. MADAAN)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No