

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

CRM-M-27566-2018

Date of decision:-17.8.2018

Sanjay Kumar

...Petitioner

Versus

State of Haryana

...Respondent

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

Argued by: Mr.S.K. Verma, Advocate
for the petitioner.

Mr.Neeraj Poswal, AAG, Haryana.

H.S. MADAAN, J.

This petition for regular bail has been filed by Sanjay Kumar – an accused in FIR No.267 dated 18.8.2017, under Sections 376(L)(D), 452, 506 IPC and Section 6 of the POCSO Act, registered with Police Station Narnaund, District Hisar.

Briefly stated, facts of the case as per prosecution story are that on 15.8.2017, complainant – prosecutrix (name not being mentioned to conceal her identity and referred to as '*the victim*') was alone in her house, in the meanwhile Sanjay accused along with Subhash son of Bhajna, resident of Rakhi came there and committed rape upon her threatening the complainant that if she disclosed this fact to any body,

then they would kill her; that the victim being mentally weak informed her mother in that regard a few days thereafter; that the matter was reported to the police. Statement of the victim was recorded. Formal FIR was registered. Accused was arrested in this case on 19.8.2017. He had filed an application for regular bail in the Court of Sessions, which was declined by Additional Sessions Judge, Hisar vide order dated 24.4.2018, as such, he has approached this Court with the same request.

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

I have heard learned counsel for the parties besides going through the record.

It is a case of gang rape. The petitioner-accused along with his co-accused had trespassed in the house of complainant, who was minor at that time and mentally weak and finding her alone had committed rape on her. Such type of criminal accused have to be viewed with all seriousness. The complainant getting her statement recorded in the trial Court has supported the prosecution story.

Though learned counsel for the petitioner has tried to build up an argument that complainant was more than 18 years of age at the time of alleged occurrence and no offence under POCSO Act is made out and further the assertions that she is an illiterate and mentally weak are wrong. But then I find that as the things stand, she was statedly minor at the time of incident and mentally weak. The prosecution has taken the date of birth certificate of prosecutrix as shown in her school record. During the trial, it would be seen whether she was minor at the time of

incident or had attained majority. It shall further be seen whether she is mentally weak or not. The trial is going on. The guilt of the accused shall be determined during the trial. The trial is likely to conclude in a near future. There are reasonable chances of the petitioner tampering with the prosecution evidence and absconding, if granted bail.

Therefore, finding no merit in the petition, the same stands dismissed.

17.8.2018

Brij

(H.S.MADAAN)**JUDGE****Whether reasoned/speaking : Yes/No****Whether reportable : Yes/No**