

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

CRM-M-33126-2018

Date of decision:-13.9.2018

Dharmender

...Petitioner

Versus

State of Haryana

...Respondent

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

Present: Mr.Parminder Singh, Advocate
for the petitioner.

Mr.Neeraj Poswal, AAG, Haryana.

H.S. MADAAN, J.

This petition for regular bail has been filed by petitioner – Dharmender – an accused in FIR No.295 dated 5.11.2017, under Sections 4, 6, 17, 18 of POCSO Act and 452 of IPC, registered at Police Station Quilla, District Panipat.

Briefly stated, the facts of the case as per prosecution story are that accused Anil Kumar and Dharmender (present petitioner) had kidnapped the victim aged about three years, minor daughter of

complainant - Renu wife of Vinod Kumar, resident of Shalni Godown, Barsat Road, Noorwala, Panipat. They had taken the victim to godown of Singla factory. On being informed by neighbour Raju, the complainant went there and heard cries of her daughter, the victim. On getting closer, she saw that Anil Kumar, Chowkidar accused having sexual intercourse with her daughter - the victim, while petitioner/accused Dharmender was standing on the gate of godown to ensure that nobody could enter the said godown. On seeing the complainant, both the accused ran away. The victim was taken to hospital and got admitted there. On the basis of statement of the complainant Renu, formal FIR was registered. The investigation in the case started. Accused Dharmender was arrested in this case on 5.11.2017. The petitioner had filed an application for regular bail in the Court of Sessions, which was declined by learned Additional Sessions Judge/Special Judge, Panipat vide order dated 6.7.2018, 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.

Learned counsel for the petitioner has argued that in the statement made to the police, the complainant has not named the present petitioner to be guilty of kidnapping of her minor daughter along with Anil Kumar or Dharmender standing guard near the gate of the godown to ensure that nobody entered the godown while Anil Kumar was committing rape upon the victim, as such, he is innocent and has been

falsely involved; that Raju appearing as PW1 had stated that he had not seen Dharmender along with Anil Kumar; that material witnesses during the trial have been recorded, therefore, the petitioner be granted concession of regular bail.

Whereas the request is being opposed tooth and nail by the State counsel, who prayed for dismissal of the petition.

After hearing the rival contentions, I find that though in the FIR the petitioner is not named and no specific criminal act is attributed to him but it is a matter of common knowledge that FIR is often lodged in hurry and it may not contain the minute and precise details of the incident. The FIR can be got registered by a person, who may not be an eye-witness of the same. It is only during investigation of the case that police can come to know about the culprit and criminal, who had committed the crime. Merely for the reason that accused is not named in the FIR does not result in causing any dent in the prosecution story.

In this case while getting her statement recorded in the Court as PW2, the complainant Renu has specifically deposed that her minor daughter aged 3 years had been kidnapped by Anil Kumar and Dharmender accused and when on coming to know that they had taken her such minor daughter to gas godown, she had gone there, she observed that Dharmender was standing guard on the gate of the gas godown to ensure that nobody could enter the said godown, whereas Anil Kumar was found to be having sexual intercourse with her minor daughter. No cogent or convincing reason could be given for alleged false implication of Dharmender in this case. During the course of investigation, the

involvement of Dharmender was found to be in the crime, as such, he was arrested and on completion of investigation both Anil Kumar and Dharmender have been sent up to face trial. The trial against both the accused is going on, which is likely to be concluded in near future. The guilt of the accused shall be determined during the trial. The allegations against the petitioner are very grave and serious that he along with his co-accused Anil Kumar kidnapped a minor girl aged about 3 years for the purpose of committing rape upon her and then while Anil Kumar was committing rape upon the minor girl, the present petitioner stood guard to ensure that nobody came there to stop him from doing so or observe him doing so. His role in the crime is quite significant. The facts and circumstances of the case do not warrant grant of concession of regular bail to the petitioner. The apprehension expressed by the State counsel that if petitioner is granted bail, there is every likelihood to his absconding and even trying to tamper with the prosecution evidence cannot be brushed aside lightly.

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

13.9.2018
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No