

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

Criminal Misc. No.M- 38000 of 2017(O&M)

Date of Decision: April 5 , 2018.

Prateek Saraswat PETITIONER (s)

Versus

State of Haryana RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

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

Mr. Ashok S.Chaudhary, Addl.AG, Haryana.

Ms. Aditi Girdhar, Advocate
for the complainant.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

The petitioner prays for bail pending trial in FIR No.656 dated 11.10.2016 under Sections 363/366A IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012, registered at Police Station Sarai Khawaja, Faridabad.

It is contended that the petitioner, who is 18 years old, has been falsely implicated in this case at the instance of one Vibhuti Kumar Rastogi, the co-accused who has surprisingly been found innocent by the police during

investigation. The abovesaid FIR was registered on a statement of the brother of the alleged victim, wherein she was reported to be missing from her home since 02.10.2016. A suspicion was raised regarding one Sandeep Mishra having enticed away the complainant's sister. The victim was recovered from Happur on 16.12.2016. Her statement under Section 164 Cr.P.C. was recorded on 17.12.2016 (Annexure P2). The victim stated that she was taking media training from one Vibhuti Kumar. It is alleged that he indulged in indecent activities with her. The said Vibhuti Kumar was contesting the elections at Press Club. On 01.10.2016, the victim was asked to come to the Press Club to distribute pamphlets. She was told that four boys would come there. It is stated that the said four boys on arrival asked about the victim, who is the assistant of Vibhuti Kumar. The victim was asked by Vibhuti Kumar to go with the said boys to get the paper. She was taken to Kashmiri Gate in a car and then in Metro to Shahadra. Her phone was snatched by them after they got down from Metro. Two of the boys were stated to be drunk and the other two boys were asked to leave and remaining two said that they would proceed to Gurgaon railway road by auto. It is alleged that the victim was forced to have a cold-drink laced with intoxicant. They reached at a hotel. One of the boys gave a copy of Aadhar Card, his address, phone number as well as the name and phone number of the victim, who was taken to a room. Ultimately, it was alleged that she was raped by the said two persons by threatening her with a broken bottle. She was then brought to Shahdara and told to go back to the office of Vibhuti Kumar where her phone would be returned. She was further told to have one I-pill tablet. The victim proceeded to the Central

Secretariat and returned to her residence, but she did not reveal anything to her father out of fear that he would physically abuse her. She took ₹75/- from her father and went out of the house while telling him that she was going for bringing her phone. It is stated that she went to Badarpur and met one Mehaboob. She revealed the entire incident to him on which he advised her to accompany him as her father would beat her. She was kept by the said Mehboob at Agwanpur for one week. She was subjected to rape by him. Thereafter, she was taken to a brothel where one Raju – a friend of Mehboob came and took her to Sehatpur where she was kept for a week and subjected to rape by Raju. The victim fell unwell and was sent by Raju to his friend's house in Happur. It is stated that she managed to contact her brother, who came to Happur and rescued her. Vibhuti Kumar is alleged to be responsible for all the sequence of events. It is further stated that Sandeep was named at the instance of Vibhuti Kumar. Medical examination of the victim was carried out on 20.12.2016 (Annexure P3) and no injuries were detected on her person.

Thereafter, another statement of the victim was recorded on 01.04.2017 before the Child Welfare Committee, Faridabad (Annexure P4). The victim named the present petitioner alongwith one Manu Tiwari as two of the four boys as mentioned in her earlier statement. Another FIR No.227 dated 02.05.2017 under Sections 354D/506 IPC was registered against the petitioner at the instance of the victim while alleging that she was threatened by the petitioner on telephone in April, 2017 when she was present at CIA Branch, Sector 31, Faridabad.

Learned counsel for the petitioner vehemently argues that the petitioner is sought to inculpated merely on the basis of the recovery of a photocopy of his Adhaar Card from the RR Lodge, Gaziabad (UP). It is contended that the petitioner never appended his signatures in the register as is alleged by the prosecution. Photocopy of the Adhaar card was available with Vibhuti Kumar, who misused the same to falsely implicate the present petitioner in this case. The victim in her statement before the learned trial court in FIR No.227 dated 02.05.2017 specifically stated that the present petitioner has been implicated due to Vibhuti Kumar Rastogi. The present petitioner, it is stated, is not guilty. It is further contended that the police authorities have declared Vibhuti Kumar Rastogi to be innocent in the present case. The entire prosecution version, it is contended, is demolished by the subsequent statement suffered by the victim in FIR No.227 dated 02.05.2017. The petitioner, it is contended, is a young boy of 18 years and has needlessly been involved in this case at the instance of said Vibhuti Kumar Rastogi. The petitioner has been in custody since 17.05.2017. The victim in this case has since deposed before the learned trial court. The petitioner undertakes not to misuse the concession of bail, if afforded to him. 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 by the victim. However, learned counsel are unable to deny the statement of the victim in the matter arising out of FIR No.227 dated 02.05.2017, though learned counsel for the complainant submits that an application has been

moved by the victim in the said matter seeking permission for recording her statement yet again.

Certified copy of the statement of the victim in FIR No.227 dated 02.05.2017 alongwith the true translation thereof, furnished in Court today, is taken on record subject to just exceptions.

Heard learned counsel for the parties.

Needless to say, the evidence on record shall be considered by the learned trial court at the appropriate stage and it is not considered appropriate to express any opinion thereon, at this stage. Learned counsel for the State, on instructions from SI Sanjay Prasad, verifies that the petitioner is about 18 years old and not involved in any other criminal case except the present FIR No.656 dated 11.10.2016 and FIR No.227 dated 02.05.2017. Trial in this case is not likely to conclude in the near future. 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 before the Court, if released on bail.

Keeping in view the facts and circumstances of the case but without commenting upon or expressing any opinion on the merits thereof, this petition is allowed. The petitioner be released on bail pending trial subject to his furnishing requisite bail bonds and surety to the satisfaction of the learned Trial Court.

It is made clear that the petitioner shall not directly or indirectly try to contact the complainant-prosecutrix/any of her family members or witnesses in this case. Any such infraction on the part of the petitioner may entail cancellation of his bail.

It is clarified that none of the observations made hereinabove shall

be construed to be a reflection on the merits of the case. The same are solely confined for the purpose of decision of the present petition.

April 5 , 2018.
'om'

(LISA GILL)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No