

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

**CRM-M-41368-2017 (O&M)
Date of Decision: 14.12.2018**

Mukhtiar Ali

i....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. R.S. Mamli, Advocate
for the petitioner(s).

Ms. Mahima Yashpal, AAG, Haryana.

ANITA CHAUDHRY, J

Petitioner is seeking regular bail in FIR No.60 dated 16.01.2017 registered under Sections 363, 366-A, 302, 201 and 34 of IPC and Section 4 of POCSO Act at Police Station Sushant Lok, Gurugram, District Gurugram.

The case was adjourned on the last date as the State had informed that the witnesses were residents of West Bengal and their whereabouts were to be located.

Learned State counsel informs that the complainant had been served but earlier she did not appear and they do not have the address of Aarsu. It is also stated that no identification parade was held.

The case of the prosecution is that 3 boys picked up a 10 year old girl in a car. Her body was found in a water tank few days later. The girl had been raped. There were wounds all over her body. Co-accused Ejaj Malik suffered a disclosure statement admitting to rape and throwing the

dead body. Ejaj Malik named the petitioner who was also present. The call records also show the presence of the petitioner on the spot.

The petitioner is in custody since 13.02.2017. The case is being adjourned for prosecution evidence. The complainant and the other main witnesses, residents of West Bengal, are not appearing. The police has not been able to ascertain the address of Aarsu, the main witness who is also a child of 10-11 years. The DNA report is not conclusive.

State fears that if the petitioner is released and as he is a resident of West Bengal he would not make himself available for trial.

Counsel for the petitioner states that they are ready to furnish local surety.

The petitioner is in custody for over 1 ½ years. The trial is not proceeding as the police does not have the address of the main witnesses. It is indeed unfortunate. The case earlier was being adjourned to enable to prosecution to procure their presence and record their statements. The State counsel now states that they do not have the address of the main witness.

In the light of above, the petition is allowed. Petitioner is ordered to be released on bail on his furnishing local surety and adequate bail bonds to the satisfaction of the trial Court/Duty Magistrate concerned.

Copy of this order be sent to Commissioner of Police, Gurugram.

December 14, 2018

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**(ANITA CHAUDHRY)
JUDGE**

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