

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

CRM-M-47307-2018

Date of decision: 26.10.2018

Vishal

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. B.S.Dhull, Advocate,
for the petitioner.

JAISHREE THAKUR, J.

This is a petition that has been filed under Section 438 Cr.P.C. for grant of anticipatory bail to the petitioner herein in case FIR No. 57 dated 29.04.2018 under Sections 363, 366A IPC registered at Police Station Siwan, District Kaithal. Sections 376, 419, 120-B IPC, Section 4 of POCSO Act and Section 3 of SC/ST Act 1989, added lateron.

Learned counsel for the petitioner herein submits that initially a statement had been recorded of the prosecutrix under Section 164 Cr.P.C. in which she made allegations only against Vikas that he had committed the offence punishable under Section 376 IPC and on her statement Vikas was arrested and remained in judicial custody for a period of three months. Thereafter, the police with ulterior motive again got the statement of the victim recorded, in which she stated that not Vikas, it is Vishal, the present petitioner, who is the elder brother of Vikas, had committed the crime and, thus, he has been falsely implicated. It is also argued that the alleged victim was not recovered from the custody of the petitioner. It is contended that

father of the petitioner has applied for anticipatory bail which was allowed by the Addl. Sessions Judge, Kaithal by order dated 20.09.2018, however, without appreciating the facts in its correct perspective, the bail application of the petitioner was dismissed in a cursory manner.

I have heard learned counsel for the petitioner and have also perused the impugned order dated 15.10.2018, passed by learned Addl. Sessions Judge, Kaithal, declining the anticipatory bail to the petitioner herein.

The bail of the petitioner herein was rejected by taking note of the argument raised by the Public Prosecutor that it was the petitioner herein who had committed rape upon the victim. In fact, he had hatched a conspiracy with his father and the younger brother Vikas and he produced his minor brother as the person accused in order to get the benefit of him being juvenile. As noted by the Addl. Sessions Judge, Kaithal, it is the case of the prosecution that the petitioner is the person who committed rape upon the victim, but in connivance with his father & minor brother, his minor brother Vikas was produced before the police so that he could get bail by taking benefit of being a juvenile.

At this stage, the allegations as set out in the FIR are serious and it is too early to opine as to who amongst Vishal and Vikas, is the preparator of an offence punishable under Section 376 IPC read with Section 4 of POCSO Act.

Finding no infirmity with the order so passed, the present petition stands dismissed.

However, any observations made herein are only for the purpose of declining anticipatory bail and would have no bearing on the merits of the case, which is to be decided on the basis of the evidence adduced.

26.10.2018

Satyawan

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes.
No.