

In the High Court of Punjab and Haryana at Chandigarh

Crl. Misc. No. M-4849 of 2018

Date of Decision: 19.2.2018

Vikas Sharma @ Vicky

.....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Sachin Gupta Ladwa, Advocate
for the petitioner.

Ms. Mahima Yashpal, AAG, Haryana
assisted by SI Geeta.

Complainant in person with
Mr. Yowan Sharma, Advocate.

ANITA CHAUDHRY, J

The petitioner is seeking regular bail in FIR No. 66 dated 4.12.2017 registered at Women Police Station Kaithal, District Kaithal under Sections 120-B, 323, 376(2)(n), 376(2)(f), 506 IPC.

Counsel for the petitioner contends that the complainant was in a relationship with the petitioner for few years and they got married and had sought protection from the Court. The counsel further submits that the mother of the complainant had given a complaint against Gaurav (a cousin of the petitioner) and the allegations against the petitioner are that he was forcing his wife to have relations with the cousin. The counsel submits that the incident is said to have taken place in July 2017 and the girl had

returned to her parents house on 29.7.2017 but the complaint had been given on 4.10.2017 at Jind and thereafter it was transferred to Kaithal and the FIR finally was recorded in December 2017. The counsel further submits that since the complainant was with her mother then she would have confided her and they have a chat record of the complainant and Gaurav. Counsel also submits that an affidavit Annexure P-3 had been given by the wife.

Counsel appearing for the complainant states that evidence has been created and the affidavit does not bear the signatures of the complainant and the spellings are different. Counsel further submits that the girl had been kidnapped and it is during that period that she was produced before the Executive Magistrate though the affidavit is of 24.10.2017. The counsel initially states that the complainant does not have a mobile. On a query from the complainant she does admit that she had two mobiles.

Counsel for the complainant further urges that the girl had been kidnapped on 10.10.2017 and a Habeas Corpus petition was filed by her parents and the girl was produced before the Court and she had stated that she wanted to go with her parents. The counsel further states that the complaint had been given to the police after she returned.

State counsel informs that no complaint had been given but the complainant was produced before a Magistrate where her statement under Section 164 Cr.P.C. was recorded.

The statement given under Section 164 Cr.P.C. is silent about essential facts i.e. where was she taken or by whom.

Counsel for the complainant again stresses that Gaurav and

Vikas were both involved and the report of the Warrant Officer dated 27.10.2017 is important.

State counsel informs that they had checked up and it has been reported that the complainant had herself appeared and had sworn an affidavit dated 25.10.2017. On query, it is stated by the State on instructions that Guarav does not live in the same house as Vikas. The complainant says that they live in the same house.

The complainant is a law student and in the third year. She is major and had made a statement that she had gone to Jind from her parents house on 12.5.2017. She had married Vikas in Arya Samaj Mandir, Rohtak and had accompanied Vikas to his house. The allegations are that he started fighting with her. She had stated that Garuav used to live in a house close by and she did not know that Gaurav was married and in a normal way she started talking to him. She had made allegations that Gaurav had committed rape on her for several days and she had left the house on 29.7.2017.

Material has been placed on file to show that the complainant has at least two mobile phones. The accusation against the petitioner are that he was forcing his wife to have relations with his cousin. The petitioner's side urges that the complainant was in a relationship with Gaurav for a number of years and this fact was not known to the husband. The police has verified some facts. An affidavit was given by the girl that she had made a complaint out of misunderstanding though the complainant is now denying that any affidavit was given.

The petitioner is in custody. He is the husband. Challan is about to be filed.

Without commenting anything on the merits of the case and

considering the peculiar facts and that the trial will take time to conclude, the petition is allowed and the petitioner is ordered to be released on bail on his furnishing local surety and adequate bonds to the satisfaction of the trial Court/Duty Magistrate with the condition that he would not contact the complainant.

(ANITA CHAUDHRY)
JUDGE

February 19, 2018
Gurpreet

Whether speaking/reasoned	:	Yes
Whether reportable	:	No