

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

**Criminal Misc. No. M-51411 of 2018 (O&M)**  
**Date of decision : December 18, 2018**

Mukesh Kumar

....Petitioner

versus

State of Haryana

....Respondent

**Coram: Hon'ble Mr. Justice Fateh Deep Singh**

Present : Mr. Ankur Lal, Advocate, for the petitioner  
Mr. Baljinder Virk, DAG, Haryana for the State

**Fateh Deep Singh, J. (Oral)**

The petitioner-accused Mukesh Kumar has sought regular bail in first application under Section 439 Cr.P.C. filed in case FIR No. 50 dated 29.3.2018, under Sections 376, 506 IPC subsequently added Section 3(1)(IX) of SC and ST Act, 1989, Police Station Women Jhajjar are as follows:-

The present case was got registered on the complaint of a grown up married lady alleging that she was a tenant in a house and her husband was a mechanic. It is alleged that in the same very house, five boys claiming to be employees of Panasonic company

also started residing on rent. It is alleged that on 15.3.2018 when her husband had gone out of station, accused-petitioner Mukesh Kumar who was alone in the house when his room-mates had gone out came on the pretext of asking for water and it appeared that he was having an evil eye and intention on the complainant but the complainant refused to allow him inside. It is alleged that in the same evening on 15.3.2018 when she was doing work in the home, the accused came and caught hold of her and put a handkerchief on her mouth and she became unconscious. When she regained consciousness she found herself in a room and her salwar had been removed and the stains on her genitals reflected that she was ravished. Thereafter she disclosed the incident to her husband when he returned on 17.3.2018 leading to the registration of the present case after intervention by the senior police officials and arrest of the petitioner.

Mr. Ankur Lal, learned counsel for the petitioner claimed that various applications/complaints moved by the prosecutrix did not meet with any such success and they were found to be based on false and concocted allegations and even her application by virtue of Section 156(3) Cr.P.C. did not meet with any success and thereafter she moved to District Legal Services Authority through whom the present case was got registered and has sought to harp on proceedings under Sections 107/151 Cr.P.C. initiated by the police

bearing No. 18 dated 19.3.2018 Annexure P/2 and P/3 and has sought to highlight the applications of the prosecutrix Annexure P/2, Kalendra Annexure P/3 and application Annexure P/4 arguing that the medico legal examination does not supports the case of the prosecution.

On behalf of the State, the bail application has been opposed on the grounds that a grown up married woman while being alone in the house had been ravished by the petitioner and in view of the seriousness of the allegations and heinousness of the crime, dis-entitles to any relief.

Appreciating the submissions, the stand of the prosecutrix in her initial complaint Anneuxre P/2 purported to have been made to the SHO and diaried on 17.3.2018 does not even murmurs any such act of misconduct against the petitioner. Further-more proceedings under Sections 107/151 Cr.P.C. were initiated on 19.3.2018 against the petitioner on the complaint of the present prosecutrix and in both these complaints allegations are that the petitioner was threatening them and has shut-off his phone. From it is reflective as per the Kalendra that the parties had entered into verbal dual where threats were meted out and there is no allegation of rape. However, in a complaint Annexure P/4 registered on 28.3.2018 wherein she has levelled allegations of suspected rape after she was rendered unconscious by the accused. The proceedings consequent upon the

complaint registered on 17.3.2018 Annexure P/2 reflect that the accused-petitioner had threatened the complainant side and thus was proceeded under Sections 107/151 Cr.P.C. and was released on personal bond for maintaining peace and public tranquility and another complaint dated 17.3.2018 no where reflects any allegations of rape and it is after all these applications, the present complaint Annexure P/4 which led to the registration of the present case has come about on 28.3.2018 after almost 13 days of the alleged incident. Thus, in itself suggestive of suspicious circumstances together with the fact that the medical evidence does not supports the prosecution version of allegations of rape. The own version put forth by the prosecutrix reflects that she nowhere claims that she was aware of having been ravished by the accused and purely on the basis of dirt marks on the genitals she has presumed that she was ravished which is a debatable issue having been arisen over very applicability of Section 376 IPC and which can only be adjudicated when the parties lead their evidence at the trial. The petitioner is behind the bars since a long time. The trial is not likely to be concluded in near future, no purpose will be served by retaining the petitioner in jail. Accordingly, he is ordered to be released on regular bail to the satisfaction of learned Chief Judicial Magistrate/Duty Magistrate, Jhajjar.

The present petition stands disposed off accordingly.

The observations made herein above shall have no bearing on the merits of the case as these are purely for the disposal of the present bail application.

December 18, 2018  
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( Fateh Deep Singh )  
Judge

*Whether speaking/reasoned ?*  
*Whether Reportable ?*

Yes/No  
Yes/No