

Criminal Misc. No. M- 8525 of 2017 (O&M)

Date of decision : February 19, 2018

Sahib Hussain

.....Petitioner

Versus

State of Haryana

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

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

Mr. Anmol Malik, AAG, Haryana.

LISA GILL, J.

The petitioner prays for bail pending trial in FIR No. 119 dated 15.09.2016 under Sections 342, 328, 34 IPC and Section 4 of Protection of Children from Sexual Offences Act, 2012 registered at Police Station Women Karnal, District Karnal.

It is submitted that the petitioner has been falsely implicated in this case. The prosecutrix, in this case, allegedly went missing on 05.09.2016. A report was lodged by the complainant i.e. father of the prosecutrix on 06.09.2016 to the effect that his daughter who had gone to school at about 7.00 a.m. on 05.09.2016 but had not returned home. When he came back home, he discovered that certain gold jewellery, ₹60,000/- cash alongwith jewellery of his brother's wife were found missing. Apprehension was raised that the present petitioner had taken away the prosecutrix. On 06.09.2016 itself, the complainant again visited the police post and stated that his daughter had been recovered and he did not wish to pursue the matter any longer. Thereafter, with an ulterior motive a complaint, it is submitted, was lodged before the Superintendent of Police,

Karnal on 15.09.2016 while concocting a story that the complainant's daughter had been taken away by the present petitioner and his brother Parvej Hussain on 06.09.2016. It is alleged that the complainant's daughter was taken away in a car, administered some intoxicant and thereafter rape was committed upon her.

Learned counsel for the petitioner submits that on investigation Parvej Hussain was found innocent. Application under Section 319 Cr.P.C. for summoning the said accused has since been dismissed. Another person Sumit Rana, who had booked a room in a hotel near Gharaunda where the victim was allegedly kept for a while, has not even been proceeded against. The prosecutrix, in this case, has testified before the learned trial Court. Her cross examination has also been conducted. While referring to the statement of the prosecutrix as well as her cross examination, it is submitted that it is doubtful that the prosecutrix, in this case, was a minor. It is admitted by her that her younger brother was studying in class IX at the time of the incident. Her testimony, it is contended, is riddled with material discrepancies. The petitioner has been in custody since 25.09.2016. The trial, in this case, is not likely to conclude in the near future. It is, thus, prayed that this petition be allowed.

A photocopy of the statement of the prosecutrix before the learned trial Court is taken on record subject to just exceptions.

I have heard learned counsel for the parties.

Learned counsel for the State has opposed this petition while submitting that there are specific allegations against the petitioner. However, it is not denied that the prosecutrix, in this case, has testified before the learned trial Court. Application for summoning Parvej Hussain

has been dismissed. Six prosecution witnesses are yet to be examined. The petitioner has been in custody since 25.09.2016. He is not reported to be involved in any other criminal case. Needless to say the question of delay, if any, in lodging of the FIR, age of the prosecutrix as well as the discrepancies, if any, in her testimony are subject to the scrutiny of the learned Court which shall look into the same at the appropriate stage.

There are no allegations on behalf of the State that petitioner is likely to abscond or that he is likely to dissuade the witnesses from deposing true facts in the Court, if released on bail.

No useful purpose shall be served by keeping the petitioner incarcerated any longer. Keeping in view the facts and circumstances noted above but without expressing any opinion on the merits of case, it is considered just and expedient to allow this petition.

Consequently, 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 reiterated that none of the observations made herein above are a reflection on the merits of the case and shall have no bearing on the trial.

It is, however, clarified that the petitioner shall not try to contact the complainant/prosecutrix/any of the witnesses in any manner - directly or indirectly. Any such infraction on the part of the petitioner shall entail cancellation of his bail.

February 19, 2018
rts

(Lisa Gill)
Judge

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No