

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

**AT CHANDIGARH**

**Criminal Misc. No.M-7134 of 2019**

**Date of Decision: 10.07.2019**

Jitender @ Kali

...Petitioner(s)

Versus

State of Haryana

...Respondent(s)

**CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA**

Present:- Mr. Munish Kumar Garg, Advocate  
for the petitioner.

Ms. Gaganpreet Kaur, AAG, Haryana.

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**HARI PAL VERMA, J. (Oral)**

Prayer in the present petition filed under Section 439 of the Code of Criminal Procedure, 1973 is for grant of regular bail to the petitioner in case FIR No.645 dated 22.09.2018 under Sections 324, 376, 450, 506, 511 and 34 IPC and Section 10 of the POCSO Act registered at Police Station Meham.

The aforesaid FIR was registered on the statement of the complainant-victim, who is about 17 years of age, with the allegations that on 20.09.2018 at about 10.30 P.M., when she was alone in her house and her father was sleeping in buffalos' shed, someone called the name of her father. When the victim went outside, Jitender @ Jeetu, Caste Jat, resident of Vill. Bhaini Mato asked about the whereabouts of her father. The

prosecutrix replied that he is not at home and he should come in the morning and she closed the door of her house and slept. However, after about half an hour, Jitender @ Jeetu and Jitender @ Kali (petitioner herein) entered her house from the terrace. The petitioner fell upon the victim and tried to rape her. However, the victim shouted, but the petitioner, who was having knife in his hand, put the same on her neck and told her that in case she raised any noise, he will kill her. When the victim shouted, the petitioner attacked on her neck with an intention to kill her and thereafter, they ran away. Thereafter, listening to the cries of the victim, her cousin Amin came there and got her admitted at PGIMS Rohtak.

Learned counsel for the petitioner has argued that apart from the fact that the petitioner is in custody since 23.09.2018, the victim is not coming forward to depose in the case, despite having been granted ample opportunities, for which, bailable warrants have been issued against her. He has referred to the medico-legal report conducted on the person of the victim and her statement made under Section 164 CrPC and has argued that as per the FIR, rape has not been committed. There is no injury on the person of the victim. As regards the cut on the neck of the victim, the same is not the result of stabbing, but the same was caused when the victim moved suddenly to save her. He has further referred to the statement of the victim recorded under Section 164 CrPC and submitted that in the version recorded in the FIR, the victim has stated that her father was sleeping in the buffalos' shed, whereas there is no such recital in her statement recorded under Section 164 CrPC. He has further submitted that the prosecutrix is

not cooperating in the trial and intends to delay the trial by not appearing and deposing in the case.

On the other hand, learned State counsel, on instructions from ASI Sunita, submits that the allegations against the petitioner are serious. He has entered into the house of the prosecutrix at about 10.30 P.M. and since nobody else except the victim was there, he has not only tried to commit rape upon her, rather injury was inflicted upon her.

I have heard learned counsel for the parties.

This Court finds that when this case came up for hearing, at initial stage, on 20.02.2019, the same was adjourned for 04.04.2019, as learned State counsel had apprised that the complainant in the case was summoned for 28.03.2019. On 04.04.2019, this Court was apprised that the complainant was to be examined on 09.05.2019 and the case was adjourned for 20.05.2019. On 20.05.2019, this Court was again apprised that the complainant is still to be examined and the case was adjourned for today. However, today also, this Court has been apprised that the complainant could not be examined due to her non-appearance.

The petitioner is in custody since 23.09.2018 and despite there being ample opportunities to the complainant, she has not come forward to depose in the case. Considering the fact that conclusion of trial in the case will take sufficiently long time and no useful purpose will be served to keep the petitioner in custody, I deem it appropriate to release him on bail.

Accordingly, the present petition is allowed and the petitioner is admitted on regular bail, subject to furnishing of his bail bonds/surety bonds to the satisfaction of trial Court.

However, in order to avoid embarrassment to the complainant-victim, it is made clear that the petitioner shall not influence the victim or any other witness and shall not stay in the same vicinity where the victim is residing. In case it is found that the petitioner is trying to influence any witness including the victim or staying in the same vicinity of the victim, the prosecution shall be at liberty to seek cancellation of bail granted to him.

July 10, 2019  
**AK**

**( HARI PAL VERMA )**  
**JUDGE**

Whether speaking / reasoned?  
Whether reportable?

Yes / No  
Yes / No