

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

CRM-M No.8335 of 2019

Date of decision: 28th February, 2019

Raj Kumar

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Bhisham K. Majoka, Advocate for the petitioner.

Mr. Amrik Narwal, Dy. Advocate General, Haryana
for the respondent/State.

FATEH DEEP SINGH, J.

In this regular bail application under Section 439 Cr.P.C. filed by petitioner Raj Kumar in case bearing FIR No.323 dated 02.10.2018 under Sections 363, 366-A, 506 IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012 pertaining to Police Station Bilaspur, District Gurugram, the facts are as follows:-

The present case was got registered by mother of a girl aged around 17 years alleging that on 01.10.2018 when she had gone for work her daughter was at home and when she returned back from work around 5.00 p.m. she found that her daughter was missing and appeared to have gone with an unknown boy for marriage. She further alleged that the girl has taken away from home Rs.2,500/-, a gold ring and earrings. It was on the registration of the present case on 13.10.2018, the girl returned back

and her statement under Section 161 Cr.P.C. was got recorded. In the said statement, the victim stated that accused non-applicant Pankaj, who is their neighbour, came to their house and took her under threat on a motorbike and on the way they met Raju, a friend of Pankaj, and the girl thereafter went in a vehicle with Raju and near R.R. Hotel met Kumkum and thereafter came to Gurgaon and stayed for a night in Sector 37, Gurgaon she stayed for five days and on 06.10.2018 the said lady brought her back to Rewari and left her at bus stand and thereafter the accused non-applicant Pankaj left her at her maternal uncle's home and on 13.10.2018 she came back to Gurgaon. It was on the basis of this, petitioner Raj Kumar was arrested on 15.10.2018 after statement of the victim under Section 164 Cr.P.C. was recorded on 14.10.2018 and in second statement recorded on 23.10.2018 under Section 164 Cr.P.C. she alleged that Raju had raped her.

Learned counsel for the petitioner Mr. Bhisham Kumar Majoka, Advocate contends that the very medico legal report relied upon by the prosecution is itself illustrative that on earlier two occasions the girl has left her house on her own and there is no evidence therein to show commission of offence of rape and that in the first statement under Section 164 Cr.P.C. recorded on 14.10.2018 there is no allegation of rape against the petitioner and subsequently on 23.10.2018 these allegations

have cropped up belatedly and that the petitioner is behind bars since a long time.

Learned State counsel on instructions from ASI Ashok, Police Station Bilaspur, District Gurugram, has opposed grant of bail on the grounds that the victim happens to be a minor girl and her subsequent statement under Section 164 Cr.P.C. is illustrative that how she was defiled by the two accused Pankaj and present petitioner Raj Kumar (Raju) and who was kept in captivity for more than five days in Gurugram and defiled and therefore in view of the heinousness of the offence and seriousness of allegations disentitles the petitioner to any relief.

Going through the submissions, it is not displaced that the girl is a minor aged around 17 years. Though as per the own stand of the complainant, the girl has left the house of her own and though her statements under Section 164 Cr.P.C. at different occasions on 14.10.2018 and 23.10.2018 are quite different as in the second statement she has improved upon her version of allegation of rape against the petitioner. However, the MLR placed on the record is suggestive that even on earlier two occasions the girl has been defiled by the accused. The ultimate effect of these two statements recorded at different points of time are matters which can only be adjudicated at the trial upon evidence.

The apprehension of the State that if allowed bail the petitioner might stifle the trial, is certainly not unfounded. Without feeling necessity to advert further on to the merits of the case, in view of the heinousness of the offence and seriousness of allegations as well as the apprehension of the State impels this Court to decline the prayer made. Thus, the present petition stands dismissed.

(FATEH DEEP SINGH)
JUDGE

February 28, 2019
rps

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No