

222.

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

CRM-M-9836-2019

Date of decision:07.03.2019

VIRENDER @ KALI

... Petitioner

versus

STATE OF HARYANA

.... Respondent

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Ram Kumar Saini, Advocate,
for the petitioner.

Ms. Priyanka Sadar, AAG, Haryana.

HARI PAL VERMA, J.(Oral)

Prayer in this petition filed under Section 439 Cr.P.C. is for grant of regular bail to the petitioner in case FIR No.240 dated 20.07.2017 registered under Sections 376(2)(n), 506 of IPC, Section 6 of POCSO Act and Section 3(1)(w) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, at Police Station Sadar, Hansi, District Hisar.

Learned counsel for the petitioner states that the aforesaid FIR was registered at the behest of Ram Swaroop, father of the prosecutrix, wherein the petitioner has not been named as an accused and the allegation, if any, is against the co-accused, namely, Sonu. He also refers to the statement of the prosecutrix recorded under Section 164 Cr.P.C. dated 20.07.2017 as well as her statement dated 20.07.2017 made under Section 161 Cr.P.C. He states that in both the statements, there is no allegation against the petitioner in any manner. However, it is only on 25.07.2017, the

prosecutrix submitted an application to the SHO Police Station Sadar, Hansi,

naming the petitioner along with other co-accused, Vikram as an accused alleging therein that the accused have been physically abusing and committing rape upon her for the last 3-4 months in the Gher situated on the road leading to pond and in this manner, the prosecutrix became pregnant. He also referred to the statement of the prosecutrix as PW2 wherein she has stated that her statement was got recorded by the police before the Judicial Magistrate and she has narrated the incident in its totality. On the relevant date of her recording the statement before the Magistrate,, she was not under any threat. Petitioner is in custody since 02.08.2017. As against the total 27 witnesses cited by the prosecution, 10 witnesses have been examined and the trial in the case will take long time.

Learned State counsel, on instructions from ASI Dharampal, does not dispute the custody. However, she has argued that since the prosecutrix was under threat from the petitioner, she has not named the petitioner in her initial version and at the time of recording of her statement, but on 25.07.2017, she had submitted an application to the SHO, Police Station Hansi, naming the petitioner in addition to the other accused Sonu and Vikram.

I have heard learned counsel for the parties.

The perusal of FIR, which was registered at the behest of Ram Swaroop (father of the prosecutrix), nowhere suggest the name of the petitioner, thus there is no allegation against him. Similarly in statement under Section 164 Cr.P.C. made by the prosecutrix, she has not named the petitioner as accused. The allegation of rape, if any, is against the co-accused Sonu. It is only on 25.07.2017 while moving an application to the SHO concerned, she has named the petitioner as an accused for the first time.

Thus, neither in the FIR nor in the statement under Section 164 Cr.P.C., she has named the petitioner who is in custody since 02.08.2017. She has already been examined. Accordingly, this Court finds that the petitioner deserves to be admitted on bail.

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

It is made clear that the petitioner shall not extend any threat and shall not influence any prosecution witnesses in any manner directly or indirectly.

(HARI PAL VERMA)
JUDGE

07.03.2019
sanjeev

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