

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

Criminal Misc. No.M-18814 of 2018

Date of Decision: 23.01.2019

Mukesh Kumar

...Petitioner(s)

Versus

State of Haryana

...Respondent(s)

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

Present:- Mr. Amit Choudhary, Advocate
for the petitioner.

Mr. Manish Bansal, DAG, Haryana.

Mr. Arun Gupta, Advocate for
Mr. N.D. Achint, Advocate
for the complainant.

HARI PAL VERMA, J.

Prayer in this 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.77 dated 17.11.2017 under Sections 376(2)(n) and 506 IPC registered at Police Station Women, Panipat, District Panipat.

As per the prosecutrix, the petitioner is her neighbour and belongs to the same caste. The petitioner-accused used to visit their house frequently in late/early hours and there were good relations between both the families. The petitioner was already married and had two children. In June, 2004, the prosecutrix was about 13½ years of age and was a student of 9th class. There were vacations in the school and her parents along with her younger brother and sister had gone to her uncle Sulekh Kumar in Village Gangoh, District Saharanpur, Uttar Pradesh for some domestic

work. She was alone in the house. On 27.06.2004, at about 10-00 P.M., after having food, when she was sleeping, the accused came to their house and asked for water. When the prosecutrix went inside the kitchen to fetch water for him, the petitioner locked the main door and caught her in the kitchen. After closing her mouth forcibly, he took her inside the room and committed rape upon her. When she tried to make noise, the petitioner threatened that in case she tried to make a noise, he would kill her and also her brother and sisters. Under this fear, she did not make a noise. Thereafter, as and when she was alone at home, the accused finding an opportunity, used to rape her. He had threatened her not to tell about it to anybody. This continued till December, 2013, when the prosecutrix told him that she would disclose this fact to her parents. The petitioner told her that he will marry the prosecutrix, for which he has already filed a divorce petition against his wife. In January, 2014, the petitioner forcibly took the prosecutrix to Gohana Road, Sanjay Colony, Stree No.1 in the house of Pawan Rana, where he used to develop physical relations daily. On 18.01.2014, the accused brought her at Sanjay Chowk, Panipat, where he prepared certain papers and got her signatures so as to give an impression that Court marriage has been solemnised. On 23.09.2014, the accused shifted her to Babail Road, Ram Nagar in the house of Rohtash and assured her that he would solemnise marriage with her. Since the prosecutrix was pregnant from the petitioner, on 07.12.2014, a male child was born to her. In this manner, FIR in question was registered.

Learned counsel for the petitioner has argued that the petitioner has falsely been implicated in the aforesaid FIR. The petitioner

is already married, having two children from his wife. After registration of the FIR, statement of the prosecutrix was recorded under Section 164 CrPC, wherein she has admitted that the petitioner and the complainant used to reside as husband and wife voluntarily and a male child was born out of this relationship. The prosecutrix has refused to get her medico-legal examination conducted, which falsifies the story put forward by the prosecution. Challan has been presented and charge has not yet been framed. Right from the year 2014 till 2017, the petitioner and the prosecutrix were in a consensual relationship. The continuous consensual physical relations could not be termed as rape. They are known to each other for the last more 10 years. Consensual intercourse would not amount to rape.

On the other hand, learned State counsel has argued that the petitioner has committed rape upon the prosecutrix against her consent and therefore, he does not deserve to be admitted on bail. Petitioner has committed rape upon the prosecutrix when she was hardly 13½ years of age.

I have heard learned counsel for the parties.

On July 30, 2018, learned State counsel had apprised this Court that statement of the complainant is yet to be recorded in the case. Thereafter, an application under Section 319 CrPC was filed before the trial Court, which was pending consideration on 16.11.2018. Pursuant to order dated 11.01.2019, the complainant is present in Court.

The allegation against the petitioner is that he has committed rape upon the complainant when she was about 13½ years of age. Despite

being married, he had developed physical relations with the complainant and out of this relationship, a child was born. The petitioner was abusing the prosecutrix physically under the garb of marrying her, despite the fact that he was already married and was having children from his marriage. The prosecutrix has a child of about 3 years and is without any shelter. The allegations against the petitioner are quite serious. In case he is enlarged on bail at this stage, there is a possibility that he may influence the witnesses, as the prosecutrix has alleged that the petitioner used to commit rape while extending threats.

Considering the financial condition of the prosecutrix, who is to survive along with her minor son, this Court has proposed the petitioner to pay a compensation of Rs.10,00,000/- to the prosecutrix 'at this stage' so that the complainant can survive along with her minor child, but counsel for the petitioner has not shown any inclination towards it.

Be that as it may, considering the fact that there are serious allegations against the petitioner and he had started committing rape upon the prosecutrix when she was hardly 13½ years of age and continued to exploit her physically, while giving a false assurance that he will marry her and resultantly, a child was also born out of this relationship, this Court finds that the petitioner does not deserve to be admitted on bail.

Accordingly, the present petition is dismissed.

January 23, 2019
AK

(HARI PAL VERMA)
JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No