

210.

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

CRM-M-12320-2019 (O&M)

Date of decision:14.10.2019

AKASH GOYAL

... Petitioner

versus

STATE OF PUNJAB

.... Respondent

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Preetinder Singh Ahluwalia, Advocate,
for the petitioner.

Mr. Saurav Khurana, DAG, Punjab.

Mr. Rakesh Gupta, Advocate,
for the complainant.

HARI PAL VERMA, J. (Oral)

Prayer in this petition filed under Section 438 Cr.P.C. is for grant of anticipatory bail to the petitioner in case FIR No.28 dated 18.02.2019 registered under Section 354-A of IPC and Section 8 of Protection of Children from Sexual Offences Act, 2012 (Sections 376 and 120-B IPC added lateron) at Police Station Dugri, District Police Commissionerate, Ludhiana.

Counsel for the petitioner has argued that a matrimonial dispute in the nature of divorce petition is pending between the mother and father of the prosecutrix. In the case in hand, the alleged incident took place on 01.03.2018, whereas the FIR in question was registered against the petitioner on 18.02.2019. There is no such allegation in the FIR wherein the prosecutrix has made such allegation that the rape was ever committed upon

her. It is after registration of the FIR and on the basis of statement made under Section 164 Cr.P.C., the offence under Section 376 IPC has been added in the case. It is because of the matrimonial dispute, the present FIR was registered. The father of the prosecutrix has suspected that the petitioner is having illicit relations with the mother of the prosecutrix.

Mr. Gupta, counsel appearing on behalf of the complainant, though has not disputed the matrimonial dispute between the mother and father of the prosecutrix, but has submitted that the victim in the case is a minor girl of 10 years of age and a class 4 student, and some time in order to maintain dignity of the family, parents have to consider the pros and cons of such like incident and it is for this reason, there was delay in registration of FIR. Thereafter, on the basis of statement of the prosecutrix, the offence under Section 376 IPC was added.

Learned State counsel, who is assisted by SI Jasvir Kaur, has argued that chemical report in the case was received on 15.03.2019 and as per the report, no spermatozoa was detected in the vaginal swab. He submits that as per the medico legal report from the Civil Hospital, Ludhiana, dated 24.01.2019, on local examination, though no mark of injury on the whole of the body or on external genitalia was detected, however, hymen was torn and healed.

I have heard learned counsel for the parties.

The petitioner is stated to have joined the investigation. The alleged occurrence had taken place on 01.03.2018, whereas the FIR in question was registered on 18.02.2019. There is stated to be a matrimonial dispute between the parents of the prosecutrix as the mother of the

prosecutrix is alleged to have relations with the petitioner.

Apart from the fact that the initial version when the FIR was registered which was again got registered at the behest of the prosecutrix, there is no such allegation that the petitioner ever committed rape. In fact the allegation in the FIR is that the petitioner has touched the prosecutrix at inappropriate places (touched the chest of the prosecutrix), but it is only in the statement under Section 164 Cr.P.C., the allegations invoking Section 376 IPC have been made.

At this stage, this Court finds that apart from the fact that not only the FIR is delayed, rather in the initial version, there is no such allegation.

Accordingly, the present petition is allowed and the interim bail granted to the petitioner vide order dated 22.05.2019 is made absolute.

However, the petitioner shall not extend any threat and shall not influence any witness in any manner directly or indirectly. In case such like threat is made by the petitioner, the complainant shall be at liberty to submit a complaint to the concerned SSP, who shall look into the same and will act accordingly.

(HARI PAL VERMA)
JUDGE

14.10.2019
sanjeev

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