

215.

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

CRM-M-15758-2019 (O&M)

Date of decision:16.08.2019

SUNIL

... Petitioner

versus

STATE OF HARYANA

.... Respondent

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. R.A. Sheoran, Advocate,
for the petitioner.

Ms. Gaganpreet Kaur, AAG, Haryana.

HARI PAL VERMA, J.(Oral)

CRM-13258-2019

Prayer in this application filed under Section 482 Cr.P.C. is to place on record the documents as Annexures P-3 to P-6.

For the reasons mentioned in the application, same is allowed and the documents i.e. Annexures P-3 to P-6 are taken on record.

CRM-M-15758-2019

Prayer in the present petition filed under Section 439 Cr.P.C. is for grant of regular bail to the petitioner in case FIR No.593 dated 11.09.2018 registered under Sections 342/365/376/506/120B of IPC and Section 4 of Protection of Children from Sexual Offences Act, 2012 at Police Station Bhiwani City, District Bhiwani.

As per the prosecutrix on 11.09.2018, she had come to Seth Kirorimal School, Bhiwani along with her father, so as to appear in the

matriculation examination. When they were sitting in the park, meanwhile, the petitioner, who is a resident of Bhangarh (Bhiwani), came there to show the paper and asked the father of the prosecutrix to sit in the park. He took away the prosecutrix on the pretext of showing the question paper. She was taken in a car to a hotel where the petitioner forcibly committed rape upon her and threatened that if she tells this to anyone, then she would be killed. After committing rape, he dropped the prosecutrix back in the park in his car. The prosecutrix told about the whole incident to her mother on phone. In this manner, the FIR was registered.

Counsel for the petitioner has argued that the prosecutrix in her statement under Section 164 Cr.P.C. has given her date of birth as 05.02.2000 (i.e. more than 18 years of age at the time of incident) and, therefore, the provision of POCSO Act is not applicable in the case. The prosecutrix was medically examined and the allegation of rape has not been established. He referred to the FSL report dated 21.09.2018 (Annexure P-3) and states that the laboratory examinations were carried out to detect the presence of semen on the exhibits by performing chemical test and microscopy, and based on these examinations, human semen was detected on exhibit-4 (bedsheet), however, semen could not be detected on rest of the exhibits. He states that Dr. Divya Sanghi Goyal, Medical Officer, General Hospital, Bhiwani, who was examined in the case as PW-14, has stated that hymen can be ruptured even other than the sexual activities and, therefore, she (Dr. Divya Sanghi Goyal) could not tell the duration when the hymen of the victim was ruptured, however, it may be 24 to 48 hours old because there was no redness or bleeding. The prosecutrix was examined on the same

evening. He further states even the semen collected from the bedsheet also does not match with the petitioner. The petitioner is in custody since 21.09.2018 and the trial in the case will take sufficient long time.

Learned State counsel has produced copy of FSL report dated 27.07.2019 and as per the Autosomal STR analysis, the DNA profile of seminal stains on source of item No.1 (bedsheet) does not match with the DNA profile of Sunil (petitioner herein).

I have heard counsel for the parties.

Admittedly, the prosecutrix in her statement under Section 164 Cr.P.C. has recorded her date of birth as 05.02.2000, whereas during investigation, her date of birth has been noticed as 01.07.2001. The trial Court shall examine the case on the basis of available evidence as regards the date of birth of the prosecutrix. The petitioner is in custody since 21.09.2018. The FSL report has not come forward to substantiate the fact that the petitioner has committed rape upon the prosecutrix as the semen found on the bedsheet does not match with the petitioner, whereas hymen was ruptured between 24 to 48 hours old as there was no redness or bleeding despite she was medically examined on the same evening. Therefore, at this stage, without observing anything on the merits of the case, this Court deems it appropriate to admit the petitioner on bail.

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

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

He shall also not approach the complainant in any manner.

The observations made hereinabove shall not be construed as an expression on the merits of the case and the trial court shall decide the case on the basis of available material.

(HARI PAL VERMA)
JUDGE

16.08.2019
sanjeev

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