

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM-M-22373-2019(O&M)

Date of Decision:24.07.2019

Jagtar Singh Master

.....Petitioner

Versus

State of Punjab and another

.....Respondents

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

Present: Mr. M.L. Saggar, Senior Advocate with
Mr. Rohit Joshi and
Ms. Armaan Saggar, Advocates,
for the petitioner.

Mr. Harpreet Singh Multani, AAG, Punjab.

HARI PAL VERMA, J.(Oral)

CRM-20800-2019

Prayer in this application filed under Section 482 Cr.P.C. is for placing on record statements of PW-3, PW-4 and PW-5 as Annexures P-8 to P-10.

Application is allowed, as prayed for. Statements of PW-3, PW-4 and PW-5(Annexures P-8 to P-10) are taken on record, subject to all just exceptions.

CRM-M-22373-2019

Prayer in this petition filed under Section 439 Cr.P.C. is for grant of regular bail to the petitioner in FIR No.234 dated 13.12.2018 under Sections 354, 354-A, 376, 376-A, 376-B, 506 IPC and Sections 3, 4, 5, 6

Police Station Sardulgarh, District Mansa.

The aforesaid FIR was registered on the complaint made by Jaspal Kaur, who is mother of the prosecutrix. As per FIR, the petitioner had made a telephonic call to the complainant that he(petitioner) along with his wife are coming to school. Therefore, the complainant should send her daughter, the victim. The complainant send her daughter to school at about 1.45 PM as they were known to the petitioner. Thereafter, the petitioner has telephonically informed the complainant that the work regarding completion of voter list has yet not been completed and they will send the prosecutrix at about 5 PM. The prosecutrix came to her house at about 4.45 PM. The prosecutrix was under fear. In the evening at about 7.30 PM, after taking meal when the complainant and her husband and family members were sitting, they asked the prosecutrix as to why she is not speaking. In reply thereto, the prosecutrix has told to the complainant and her husband that there was no one in the school and the petitioner has sexually assaulted and also kissed her. When this fact was brought to the notice of the petitioner that he has done wrong with their daughter, the petitioner has submitted that it is a mistake on his part and it would be resolved by way of sitting.

Learned counsel for the petitioner has argued that there is variance in the version as stated in the FIR and in the statement of the prosecutrix made under Section 164 Cr.P.C. In the statement recorded under Section 164 Cr.P.C., the prosecutrix has stated that the petitioner has removed her pant and has also removed his own pant and has inserted some sharp thing underneath from the backside due to which she felt pain and started weeping. Thereafter, the petitioner has put his hand on her mouth and said that if she will disclose this fact to anybody else, she would be

killed. The statement of the prosecutrix made under Section 164 Cr.P.C. is not supported by Dr. Rupinderjeet Kaur, Medical Officer, CHC, Jhunir, who medically examined the prosecutrix. The doctor has opined that there is no history of bathing since the time of incident. There is history of change of clothes. On general physical examination, it was found that no injury was seen on face, neck, breast, abdomen, outer and inner side of thigh or any other part of the body. He further states that on local examination, the doctor has not seen any mark over vulva, vagina, perineum or anal region. Petitioner is in custody since 13.12.2018. The prosecutrix has already been examined in the case and as against total 19 witnesses cited by the prosecution, only 07 witnesses have been examined.

Learned State Counsel, on instructions from ASI Jarnail Singh, states that the petitioner is a teacher by profession and the allegations against him are serious. The prosecutrix-victim is about 09 years of age and her statement recorded under Section 164 Cr.P.C. is in natural sequence. He further states that the prosecution has cited as many as 19 witnesses, out of which 07 witnesses have been examined whereas 03 witnesses have been given up and the case is now fixed for 25.07.2019 before the trial Court for evidence of the remaining witnesses.

Heard learned counsel for the parties.

In the FIR version, which is registered at the behest of the complainant, who happens to be mother of the prosecutrix, there is no such allegation that the petitioner has removed the pant of the prosecutrix along with removal of his own pant and has inserted some sharp thing underneath from the backside. Dr. Rupinderjeet Kaur, Medical Officer who has examined the victim, on general physical examination has found that there

was no injury seen on face, neck, breast, abdomen, outer and inner side of thigh or any other part of the body. Similarly, on local examination, no discharge per vaginum and bleeding per vaginum was seen and hymen was found intact. No injury mark seen over vulva, vagina, perineum or anal region. Therefore, this Court finds that the contents of FIR are at variance to the statement recorded under Section 164 Cr.P.C. Thus, culpability of the petitioner is yet to be established during trial. Petitioner is in custody since 13.12.2018 and trial in the case is not likely to be concluded in the near future, therefore, 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 furnishing of his bail bonds/surety bonds to the satisfaction of trial Court.

However, the observations made hereinabove shall not be construed as an expression on the merits of the case and the trial Court shall proceed with the trial independently without being influenced by the order of bail passed by this Court.

It is made clear that since the allegations have been made by a student against a teacher, the petitioner shall not try to influence the witnesses in any manner and shall not stay in the same village, where the prosecutrix is residing. It is left open to the petitioner to seek his transfer from the school to some other place.

July 24, 2019
seema

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No