

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

223

CRM-M-23264-2019

Date of Decision:12.12.2019

Gurpreet Singh alias Gopi

.....Petitioner

Versus

State of Punjab

.....Respondent

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

Present: Mr. Sukesh K. Jindal, Advocate for
Mr. Gurjot Singh Mangat, Advocate,
for the petitioner.

Mr. Saurav Khurana, DAG, Punjab.

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 FIR No.238 dated 27.12.2018 under Sections 376, 506 IPC and Sections 3 & 4 of the POCSO Act, 2012, registered at Police Station Daresi, Ludhiana.

The aforesaid FIR was registered on the statement of the prosecutrix. As per FIR, the prosecutrix was born on 27.07.2003 and has passed her class-4 examination. On 26.12.2018 at about 10 O' clock, when she was alone in the room on the first floor and her father, uncle and aunt were on work, her grand-parents and younger sister were present on the ground floor, the petitioner entered her room. He bolted the room from inside and threatened her for the life. The prosecutrix got scared. The petitioner while threatening the prosecutrix committed rape upon her. He

further states that in case she will tell the incident to anybody, he will kill her father. She narrated this incident to her father who made phone call at 181 to the police.

Learned counsel for the petitioner has argued that the petitioner is in custody since 02.01.2019. The alleged incident has occurred on 26.12.2018. The prosecutrix was medically examined and no injury was found on her person. The petitioner being Helper with the father of the prosecutrix has been falsely implicated in the case. Even in her statement under Section 164 Cr.P.C., the prosecutrix has not made any allegation as regards the offence of commission of rape, though she has stated that the petitioner entered her room, bolted it from inside, slapped her and put her on the bed. Moreover, the prosecutrix has been examined in the case and trial is not likely to be concluded in the near future. He refers to the report of the chemical examiner to contend that no DNA test has been conducted and merely because spermatozoa was detected in the contents of exhibit(i) i.e. three vaginal swabs, is not sufficient enough to establish involvement of the petitioner in the crime.

Learned State Counsel, on instructions from ASI Sawinder Singh, does not dispute the custody period. However, he states that the prosecutrix in the case has been examined and she has supported the prosecution version and has stated that the petitioner has committed rape upon her. He further states that merely because in her statement under Section 164 Cr.P.C., she has not detailed the offence of commission of rape, she being a minor girl about 15 ½ years of age, it cannot be said that the petitioner has falsely been implicated in the case.

Heard learned counsel for the parties.

Admittedly, the petitioner is in custody since 02.01.2019. There is no dispute as regards statement of the prosecutrix recorded under Section 164 Cr.P.C. Learned counsel for the petitioner has given enough stress to such statement of the prosecutrix to contend that the prosecutrix has not made any allegation as regards commission of rape. Thus, there being variance in the statement recorded under Section 164 Cr.P.C. and in her evidence made during trial, this Court finds that strict culpability of the petitioner in the crime is yet to be established. Trial in the case is not likely to be concluded in the near future. As against total 10 witnesses cited by the prosecution, only 01 witness has been examined in the case so far. Therefore, this Court finds that the petitioner deserves to be admitted 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.

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 the petitioner shall not extend any threat and shall not try to influence any prosecution witnesses directly or indirectly in any manner.

December 12, 2019
seema

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No