

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

CRM-M-23671 of 2019.

Decided on:- December 03, 2019.

Shabaz.

.....Petitioner.

Versus

State of Punjab and another

.....Respondents.

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

Present:- Ms. Ritu Punj, Advocate
for the petitioner.

Mr. Sukhbeer Singh, A.A.G., Punjab.

Mr. Tribhuwan Singla, Advocate
for respondent No.2-complainant.

HARI PAL VERMA, J. (Oral)

The petitioner has filed the present petition under Section 438 Cr.P.C. seeking anticipatory bail in the event of his arrest in FIR No.19 dated 25.01.2019 under Sections 376 and 417 IPC as well as Section 4 of the Protection of Children from Sexual Offences Act, 2012 registered at Police Station Haibowal, District Ludhiana.

The aforesaid FIR was registered at the behest of respondent No.2-complainant Juver Khan father of the prosecutrix, who is about 13 years of age. As per the complainant, on 03.07.2018, the petitioner, who is otherwise residing in the same vicinity had called the prosecutrix on the pretext that Nazrana is calling her. Believing it, the prosecutrix had gone to the house of the petitioner, where he caught hold of her and sexually harassed her. When the complainant and his family started searching the prosecutrix, they could not trace her and after 3-4 hours, the complainant came to know

from the people that his daughter (prosecutrix) had gone to the house of the petitioner. Thereafter, the complainant with some persons of the locality had entered the house of the petitioner and they saw the prosecutrix with the petitioner in an objectionable position. Thereafter, a Panchayat was called where the petitioner had confessed his guilt. The matter was compromised and the petitioner had offered a sum of Rs.3 lakh to the victim as compensation on account of harassment. Accordingly, 3 cheques for an amount of Rs.1 lakh each were given. However, on presentation, the cheques were bounced.

Learned counsel for the petitioner has argued that the alleged incident had taken place on 03.07.2018, whereas the present FIR was registered on 25.01.2019. The matter was compromised between the parties. No medical examination of the prosecutrix was conducted on 03.07.2018.

Learned counsel for the petitioner has referred to the affidavit dated 15.04.2019 (Annexure P-3) furnished by respondent No.2-complainant Juver Khan in support of his contention that the matter has been compromised between the parties.

Learned counsel for respondent No.2-complainant does not dispute the compromise and the aforesaid affidavit furnished by respondent No.2. Power of attorney filed on behalf of respondent No.2 in Court, is taken on record.

Learned State counsel, on instructions from HC Sanjeev Bhagtana, has submitted that the petitioner has joined the investigation and his custodial interrogation is not required in the case. He has further submitted that the medical examination of the prosecutrix was conducted on 29.01.2019

and as per the report dated 16.04.2019 of the chemical examiner, spermatozoa were detected.

I have heard learned counsel for the parties.

There is no dispute that the alleged incident had taken place on 03.07.2018 and the FIR was registered on 25.01.2019. The medical examination of the prosecutrix nowhere suggests that semen was found on her person or the DNA test was conducted in the case. In the absence of such material like DNA and noticing the fact that the petitioner has joined the investigation and his custodial interrogation is not required, the present petition is allowed and the interim bail granted to the petitioner vide order dated 19.08.2019 is made absolute.

However, if required, the petitioner shall continue to join investigation as and when required to do so and shall abide by the terms and conditions, as laid down under Section 438(2) Cr.P.C.

It is made clear that the observations made hereinabove shall not be construed as an expression of opinion on the merits of the case. The petitioner would not be entitled to take any mileage of the aforesaid observations during the trial.

December 03, 2019
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No