

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

213

CRM-M-23740-2019

Date of Decision:03.07.2019

Sandeep @ Kala

.....Petitioner

Versus

State of Haryana

.....Respondent

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

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

Ms. Gaganpreet Kaur, AAG, Haryana.

HARI PAL VERMA, J.(Oral)

Prayer in this 2nd petition filed under Section 439 Cr.P.C. is for grant of regular bail to the petitioner in FIR No.633 dated 05.07.2018 under Sections 376-A, 376-D, 34 IPC, Section 4 of the POCSO Act, 2012, and Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, registered at Police Station Chandni Bagh, Panipat.

The earlier petition i.e. CRM-M-53970-2018 filed by the petitioner was dismissed as withdrawn vide order dated 11.02.2019.

Learned counsel for the petitioner has argued that the present petition has been filed after examination of PW11-Dr. Suman Lata, who has appeared before the trial court, wherein she has stated that "Hymen tags are healed after the intercourse of 5-7 days. It is correct that intercourse must have taken place before 5-7 days from my examination". He has further argued that as per FIR, the alleged incident of rape has taken place on

05.07.2018 and the prosecutrix has been examined by the doctor on the same day i.e. 05.07.2018 in the evening at about 11 PM. In view of the statement of PW11-Dr. Suman Lata wherein it has been stated that intercourse must have taken place before 5-7 days from her examination, comes to the help of the petitioner as the alleged incident has taken place on 05.07.2018 and the prosecutrix was examined on 05.07.2018 itself. He refers to the statement of PW4-prosecutrix, who has been examined in the case. In her cross-examination, she has stated that the petitioner has not committed rape upon her and he has only misbehaved with her. The allegation of rape if any is against co-accused Rohit. Petitioner is in custody since 06.07.2018.

Learned State Counsel, on instructions from ASI Surinder Kumar, submits that FSL report in the case has been received. As per FSL report, since there is no amplification of DNA in item No.1 (salwar), item No.2A (glass slide), item No.2B (cotton swab), which is necessary to compare with DNA profile of the petitioner, hence, no opinion can be given in the case. However, she does not dispute the fact that the petitioner is in custody since 06.07.2018.

Heard learned counsel for the parties.

Considering the fact that PW4-prosecutrix in the case in her cross-examination has nowhere stated that rape was committed by the petitioner and she did not scribe contents of the complaint in the case, this Court finds that at this stage, the petitioner deserves to be admitted on bail as the doctor has not supported the case of the prosecution.

Without observing anything in the case, lest it may prejudice the case of the prosecution, 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, it is made clear that 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.

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

July 03, 2019
seema

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No