

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

**CRM-M-51567 of 2018
Date of Decision: 10.6.2019**

Ajay Kumar

....Petitioner

VERSUS

State of Haryana

....Respondent

CORAM:- HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present: Mr. S.S.Nara, Advocate
for the petitioner (s).

Mr. Deepak Sabharwal, Addl., AG, Haryana

RAJ SHEKHAR ATTRI, J.

The present petition has been filed under Section 439 Code of Criminal Procedure (in short, “Cr.P.C”) for grant of regular bail to the petitioner in case FIR No.41 dated 21.7.2018 registered for the offences punishable under Sections 328, 342, 506, 376-D, 120-B, 370 of Indian Penal Code (for short, “IPC”) and Sections 3, 4, 5, 5A, 5B, 5C, 6, 7, 9 of Immoral Traffic Prevention Act at Police Station Women, District Panchkula.

This is a tale of a hapless woman who belongs to lower strata of the society and who has been thrown to flesh trade by exploiting her economic condition. The prosecutrix is a married lady who has been staying somewhere in the beautiful city of Chandigarh along with her husband for the purpose of better avenues of income. Main accused-Sunny is running a motel and farm house in the foothills of Shivalik range in the sub urbanised

colony called Morni situated on the border of Himachal Pradesh and Haryana. Said Sunny was somewhat known to the husband of the prosecutrix and visiting them. He lured the prosecutrix and her husband by showing green avenues by promising that he will pay Rs.12000/- to the prosecutrix who has to do domestic chores in his farm house such like cleaning and washing utensils as the said accused Sunny has been in the habit of organising functions (in local parlance, party). Thus, he took her with him on 15.7.2018 at about 2:00 p.m. under said assurance and brought her at his farm house. Even on the first day, she was given some sedative substance and taking benefit of her condition, the petitioner committed rape upon her with some of his companions. When she requested them that she be allowed to talk to her husband, she was not allowed to do so and her mobile was snatched from her. Even the husband of the prosecutrix tried to speak to Sunny accused but he was also not allowed to talk with his wife.

Sunny snapped numerous photographs of the prosecutrix in different dresses and transmitted it by whatsapp and other different means to the customers. The prosecutrix was treated as a tool of sex game and she was provided to 10 to 12 persons per day. This continued up to 18.7.2018 till afternoon. However, she managed to give a phone call to her husband and narrated the worst experience in the farm house. Her husband came there and he took her to Panchkula and where he called the police by dialing 100 from his mobile phone. She then visited the police station Sector 5 Panchkula but her statement was not recorded. Rather, the officials of women police station asked her to get her complaint lodged in Manimajra police station. Thereafter, she along with her came to Manimajra police

and she was medico-legally examined which affirmed the commission of rape.

I have heard learned counsel for the parties and gone through the record.

Learned counsel for the petitioner has submitted that the name of the petitioner is not mentioned in the FIR nor the same in the statement of the prosecutrix recorded under Section 164 of the Cr.P.C.; that there is no test identification parade and that the prosecution has miserably failed to connect the accused with the crime.

On the other hand, learned State counsel has submitted that initially there were some lapses in the investigation, yet there are sufficient material to connect the accused with the crime. According to him, the accused was got identified by way of transmitting the photographs of the prosecutrix through whatsapp and she has identified him. There are ample evidence that main accused-Sunny has transmitted the photographs of the prosecutrix to the petitioner and on seeing her, he himself indulged in sexual assault of the prosecutrix and the mobile phone/whatsapp messages are being sent to Forensic Science Laboratory.

I have given my thoughtful consideration to the rival contentions and gone through the material available on record.

This Court vide order dated 22.1.2019 had found various lapses in the investigation and asked Director General of Police, Haryana to submit his report in the shape of affidavit with regard to shoddy investigation and in pursuance thereof, a report dated 18.2.2019 was submitted vide which following lapses have been noticed in the investigation : -

Ram, Vikas Kumar, Ajay Kumar, Karan Sharma, Sukhvinder Singh, Manjit Singh and Dheeraj Kumar have been got identified by showing photographs/face to the victim on mobile phone through whatsapp because these accused were identified on the basis of their calls with main accused Sunil alias Sunny during the relevant period. However, no memo was prepared, nor supplementary statement of the victim was got recorded.

(ii) Apart from above, no sincere efforts were made to ascertain/verify involvement of many other suspects during investigation.

(iii) No Test Identification Parade (TIP) was got conducted nor the provisions of Section 54-A Cr.P.C. have been complied with.

(iv) It is also observed that DVR of CCTV cameras installed at the place of occurrence taken into possession by the UT Police, Chandigarh (later on handed over to Panchkula Police) have not been sent to Cyber Forensic Laboratory for comprehensive digital examination & report.

(v) During the course of investigation, no proper paging of case diaries was made by the SIT.”

However, the investigation is in progress. *Prima facie*, it is made out that the photographs of the prosecutrix were transmitted through whatsapp (full form). No test identification was got conducted by the prosecution and the investigation is highly shoddy, unfair and has been conducted solely to help the persons behind the crime.

and they earned money by submitting her to different persons. She narrated that she was submitted to 10-12 persons per day and in this situation, it is not possible for her to identify each of the miscreants, therefore, the petitioner is not entitled to the benefit of bail at this stage solely on the ground that State agency failed to conduct the investigation in a proper and fair manner.

Keeping in view the seriousness of the offence, the petitioner is not entitled to the concession of bail.

Dismissed.

June 10 , 2019

Paritosh Kumar

**(RAJ SHEKHAR ATTRI)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No