

**In The High Court for the States of Punjab and Haryana
At Chandigarh**

CRR-1711-2017 (O&M)

Date of Decision:- 19.10.2019

Deepak and another

... Petitioners

Versus

State of Haryana and another

... Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Gourave Bhayya Gilhotra, Advocate, for the petitioners.

Ms. Aditi Girdhar, AAG, Haryana.

Ms. Charanjeet Kaur, Advocate, for respondent No.2.

GURVINDER SINGH GILL, J.

1. The petitioner has approached this Court challenging order dated 21.4.2017 passed by learned Judicial Magistrate 1st Class, Sonapat, whereby the learned Trial Court upon *prima facie* finding that an offence under Section 376 IPC also appears to have been committed apart from offences under Sections 365 and 506 IPC, has committed the case to the Court of Sessions.
2. At the very outset, learned counsel for the petitioners submits that he may be permitted to withdraw this petition with liberty to raise all the pleas raised herein before the Trial Court i.e. the Court of Sessions at the stage of framing of charges including his plea to the effect that it is a case where the prosecutrix was having consensual physical

relations with the petitioner and that it was subsequently after about 5 years that he came out with the plea that she had been raped. Learned counsel in this context has also referred to the statement of the prosecutrix recorded under Section 161 Cr.P.C. i.e. statement dated 3.9.2012 (Annexure P-2) wherein she has not stated a word about the alleged rape and that in fact even in the FIR No.345, dated 9.9.2012, registered at Police Station Civil Line, Sonipat, under Sections 365, 506 IPC (Section 376 IPC added later on), there is no allegation in respect of the rape and nor any such statement was made during the course of inquiry but subsequently at the time when the victim stepped into the witness box before learned Judicial Magistrate 1st Class during trial she has levelled allegation in respect of rape, which is nothing but an improvement in the version.

3. In view of the request made on behalf of learned counsel for the petitioner, the petition is dismissed as withdrawn with liberty to the petitioners to raise all the pleas raised herein including the pleas noticed above before the Trial Court/Court of Sessions at the time of framing of charges. The Trial Court at the stage of considering the framing of charges shall notice all the contentions as may be raised by the petitioners including their pleas to the effect that it is a case where case of consensual sexual relations between the parties and that the victim prior to her statement made in the Court before learned Judicial Magistrate 1st Class on 21.1.2017 (annexure P-4) had never raised any allegation before any forum/authority regarding her alleged rape.

4. Further in view of the peculiar circumstances of the case, it is ordered that in case the petitioners, upon their appearance before the Trial Court move an application for grant of regular bail, the same shall be decided on the same day itself keeping in view the aforesaid position and also the fact that they have earlier been on bail and there is nothing to suggest that they had misused the concession of bail.

October 19, 2019

mohan

**(GURVINDER SINGH GILL)
JUDGE**

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No