

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

220

CRM-M-28503-2019

Date of Decision:30.08.2019

Babbu @ Satnam Singh

.....Petitioner

Versus

State of Haryana and another

.....Respondents

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

**Present: Mr. Sarvesh Kumar Gupta, Advocate,
for the petitioner.**

Ms. Gaganpreet Kaur, AAG, Haryana.

**Mr. Hardeep Singh Brar, Advocate and
Mr. K.B. Raheja, Advocate,
for the complainant-respondent No.2.**

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 case FIR No.84 dated 16.03.2019 under Sections 363, 366-A IPC(the offences punishable under Section 376 (2N) IPC and Section 6 of the POCSO Act, 2012 were added later on), registered at Police Station Rania, District Sirsa.

Learned counsel for the petitioner has argued that the prosecutrix has solemnized marriage with the petitioner and as she was apprehending danger from her family, she has filed a complaint under Sections 323, 506 IPC before learned Judicial Magistrate 1st Class, Ferozepur, wherein she got her statement recorded while giving her date of birth as 09.01.2001. He refers to statement of the victim (Annexure P-1)

recorded under Section 164 Cr.P.C., wherein she has stated that she had gone from house on 14.03.2019 with petitioner Satnam Singh as she was worried about her exams. She had gone with the petitioner at her own wish and she wanted to go with her parents. Petitioner is in custody since 31.03.2019 and trial in the case is not likely to be concluded in the near future as no prosecution witness has been examined so far.

Mr. Raheja, learned counsel for the complainant has argued that after making statement dated 27.03.2019 under Section 164 Cr.P.C., the prosecutrix has made another statement on 30.03.2019 regarding commission of bad act with her. The prosecutrix is about 17 years of age. Statement made by the victim on 27.03.2019 before learned Judicial Magistrate was under pressure as on the relevant date, she was minor and was in the custody of the petitioner. The certificate under Section 118 of the Evidence Act has not been issued by the Magistrate. Moreover, the case is now fixed for prosecution evidence on 18.10.2019 and relevant prosecution witnesses would be examined on that day.

Learned State Counsel does not dispute the custody period. However, she states that statement(Annexure P-2) of the prosecutrix was recorded at the stage when the complaint was filed. Thereafter the complaint was never pursued.

Heard learned counsel for the parties.

This Court finds that there are two statements of the victim recorded under Section 164 Cr.P.C. In her statement recorded on 27.03.2019, there is no such allegation that the petitioner has ever committed rape upon her, but in the subsequent statement made by her on 30.03.2019, she has made the allegation that the petitioner has done wrong

act with her. Hence, stand of the prosecutrix is changing one after the other. In this manner, this Court finds that strict culpability is yet to be established which is possible only during the course of trial. The petitioner is in custody since 31.03.2019. Since no prosecution witness has been examined till date and the trial in the case is not likely to be concluded in the near future. Therefore, this Court deems it appropriate to admit the petitioner on bail.

Accordingly, 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.

August 30, 2019
seema

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No