

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

217+103

CRM-M-28689-2019(O&M)

Gulshan

.....Petitioner

Versus

State of Haryana

.....Respondent

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CRM-M-33455-2019

Gulshan

.....Petitioner

Versus

State of Haryana

.....Respondent

Date of Decision:03.09.2019

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

**Present: Mr. Ankur Lal, Advocate,
for the petitioner.**

Ms. Gaganpreet Kaur, AAG, Haryana.

**Mr. Gorav Kathuria, Advocate and
Mr. Aditya Sanghi, Advocate,
for the complainant.**

HARI PAL VERMA, J.

This order shall dispose of two petitions i.e. CRM-M-28689-2019 (Gulshan Versus State of Haryana) and CRM-M-33455-2019 (Gulshan Versus State of Haryana).

Prayer in the present petition i.e. CRM-M-28689-2019 filed under Section 438 of the Code of Criminal Procedure, 1973 is for grant of anticipatory bail to the petitioner in FIR No.459 dated 21.06.2019 under Section 376 IPC, registered at Police Station Mujesar, Faridabad, whereas in

CRM-M-33455-2019, the petitioner has prayed for grant of anticipatory bail in another case i.e. FIR No.125 dated 19.07.2019 under Sections 354-A(1) (iii), 354-D, 506 IPC, registered at Police Station Women, NIT Faridabad.

In CRM-M-28689-2019, the aforesaid FIR No.459 dated 21.06.2019 under Section 376 IPC was registered against the petitioner on the statement of the prosecutrix, who is aged about 23 years. As per FIR, the prosecutrix has completed her B.Com. Degree. Her father is running a shop in NIT-1, Faridabad in the name of Atul Systems Traders, whereas her mother is a house wife. She came into the contact of the petitioner about a year back when they met at the birthday party of some common friend and became friends through facebook. They used to talk daily on phone and many times, the prosecutrix and her sister used to go to watch movies also. On 09.05.2019, it was birthday of the petitioner, but because of her B.Com. Part-III examination, his birthday could not be celebrated on 09.05.2019 and therefore, on 16.05.2019, petitioner in order to celebrate his birthday party took her to OYO Hotel which is at a short distance from her house. In the night at about 2.00 AM, birthday cake was cut by the parties, but the petitioner without her consent did wrong act with her. He further asked her not to disclose the same to anybody. The prosecutrix has also come to know that the petitioner was eying on her younger sister also and established friendship with her. The prosecutrix when talked her younger sister and got the confidence to disclose everything, she(prosecutrix) told everything to her parents. For this reason, the present FIR was registered.

On 09.07.2019, notice of motion in the case was issued for 16.08.2019 and meanwhile, arrest of the petitioner was stayed by this Court.

During the pendency of the present petition, learned counsel for the

petitioner has filed CRM-26369-2019, so as to produce on record true transcript of the conversation which took place on phone between the prosecutrix and brother of the petitioner along with compact disc (CD), containing the conversations (Annexures P-5 & P-6).

Learned counsel for the petitioner has argued that the alleged incident has taken place on 16.05.2019, whereas the FIR was registered on 21.06.2019. The age difference between the petitioner and the prosecutrix does reflect that the prosecutrix is a mature girl, aged about 23 years who has passed her B.Com. Part-III Examination, whereas the petitioner is a 10+2 student, aged about 19 years. There is no medical evidence, so as to establish that the petitioner ever committed rape upon her. The physical relations between the parties, if any, were totally consensual one. Rather, it is the petitioner who is victim of the complainant. In fact, petitioner and the prosecutrix were in love affairs and nothing has happened without the consent of each other. Moreover, the prosecutrix is adult and capable to take her own decision. There are photographs to establish that they were in close relationship. He refers to the photographs attached with the petition (Annexure P-2)(colly.), so as to substantiate his argument that they were good friends and reflected their proximity to each other. In this manner, the petitioner has falsely been implicated in the present case. He further states that after registration of the FIR, the complainant got registered another case i.e. FIR No.125 dated 19.07.2019 against the petitioner through her sister.

On the other hand, learned State Counsel and the counsel for the complainant have argued that the petitioner has not only committed rape upon the prosecutrix, rather there is another FIR registered against him, wherein real sister of the prosecutrix has made similar allegation that the

petitioner used to talk to her on her mobile phone oftenly and also used to send obscene messages on the facebook. When she has stopped him not to do so, he still continued sending obscene messages on facebook. The petitioner has told her that he has raped her sister(prosecutrix in FIR No.459) and will commit the something with her also and in case, she disclosed this fact to anybody, she would be killed.

Heard learned counsel for the parties.

The allegations against the petitioner are serious. He has taken the prosecutrix to the hotel so as to celebrate birthday party, thereafter, committed rape upon her. During investigation, record from OYO Hotel was examined, wherein the entry of the petitioner and the prosecutrix stands confirmed as they have stayed in the said hotel on 16.05.2019 when the alleged offence was committed. Not only this, there is another FIR registered against the petitioner. Of course, there victim is none else but real sister of the prosecutrix.

The argument of the learned counsel for the petitioner that no medical evidence is there is of no relevance at this stage, as the alleged incident is of 16.05.2019 and the FIR was registered on 21.06.2019. In such like cases when dignity of the girl is at stake, the victim family must have given a serious thought about getting the case registered against the petitioner. No ground to grant anticipatory bail to the petitioner is made out.

Dismissed.

September 03, 2019
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(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No