

**221 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-29779-2019

Date of Decision : 30.08.2019

Dalbir Ram

.....Petitioner

Versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR. JUSTICE HARI PAL VERMA

Present : Mr. Vinod Bhardwaj, Advocate for the petitioner.

Ms.Priyanka Sadar, AAG, Haryana.

Mr.Rohan Sharma, Advocate for the complainant.

HARI PAL VERMA, J. (Oral)

Prayer in this petition filed under Section 439 Cr.P.C. is for the grant of regular bail to the petitioner in case bearing FIR No.120 dated 03.07.2018, registered under sections 365,376-D,506 IPC, Police Station Guhla, District Kaithal.

Learned counsel for the petitioner has argued that the aforesaid FIR was registered at the behest of Rakesh Kumar who has alleged that on 30.06.2018 the complainant and his family went to sleep after taking dinner and when he got up in the morning he found that his wife Sukhwinder Kaur and son Abhishek Kumar were not there in the house. Thereafter search was made. Statement of Sukhwinder Kaur was recorded under Section 164

Cr.P.C.wherein she stated that she left the house of her own sweet will. As she neither wanted to go to her in-laws house nor to her parents house, therefore, she be sent to Nari Niketan. Sukhwinder Kaur is a mature lady and has nowhere made allegation that rape was ever committed upon her. Further in the medical examination conducted upon her, rape has not been established. Learned counsel has referred to the FSL report dated 07.09.2018 whereby it has been reported that semen could not be detected on any of the exhibits mentioned on the description of parcels. Description of articles contained in parcels is as under:-

“Parcel No.	No. and seal	Description of parcel
1.	5-AS	Sealed cloth parcel containing Exhibit 1a to 1 c stated to be of Sukhwinder Kaur Exhibit 1a one dirty yellow salwar Exhibit 1b One dirty green full sleeved ladies shirt Exhibit 1 c one dirty light brown chunni
II	5AS	Sealed cloth parcel containing Exhibit 2a and 2b stated to be of Sukhwinder Kaur Exhibit 2a Two microscopic glass slides Exhibit 2b Two cotton wool swabs on sticks kept in an airtight plastic test tube described as vaginal swab.”

Learned counsel for the petitioner has further argued that the petitioner is in custody since 06.03.2019 and no prosecution witness has

been examined.

Counsel for the complainant has argued that after getting her statement recorded under Section 164 Cr.P.C., the victim has made statement under Section 161 Cr.P.C. wherein she has stated that the statement made under Section 164 Cr.P.C. was not made by her with her free will, rather, she was under the influence of the petitioner.

Learned State counsel does not dispute the aforementioned fact. However, she states that the victim has not been examined, therefore, in case the petitioner is admitted to bail, he can influence the witnesses.

I have heard learned counsel for the parties.

The victim has made her statement under Section 164 Cr.P.C. and has not levelled any allegation against the petitioner. The FSL report attached with the petition (Annexure P-4) does reflect that semen could not be detected on any of the exhibits mentioned in the parcels. The victim is a mature lady. Therefore, argument that she was under the influence of the petitioner cannot be accepted, once she has made statement under Section 164 Cr.P.C. and has not made any specific allegation against the petitioner.

Therefore, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing adequate bail and surety bonds to the satisfaction of learned trial Court.

However, it is made clear that in case the petitioner influences the prosecution witnesses in any manner directly or indirectly, the prosecution shall be at liberty to seek cancellation of his bail.

The observations made hereinabove shall not be construed as an expression of opinion on the merits of the case and the trial Court shall

decide the case without being influenced with these observations in any manner.

(HARI PAL VERMA)
JUDGE

30.08.2019
sunita

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