

223.

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

CRM-M-30475-2019

Date of decision:24.07.2019

RAJESH

... Petitioner

versus

STATE OF HARYANA

.... Respondent

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Navmohit Singh, Advocate,
for the petitioner.

Ms. Priyanka Sadar, AAG, Haryana.

HARI PAL VERMA, J. (Oral)

Prayer in the present petition filed under Section 439 Cr.P.C. is for grant of regular bail to the petitioner in case FIR No.0022 dated 19.04.2019 registered under Sections 354A, 342 of IPC and Section 10 of POCSO Act, at Women Police Station, Hisar.

The aforesaid FIR was registered at the behest of Krishna who is grandmother of the victim. As per the FIR, on 19.04.2019 at about 5.00 PM when the complainant was present in her house, her daughter-in-law Rita was crying and came running to her. She told that her daughter (grand daughter of the complainant), aged about 9 years, is present in the house of neighbour (the petitioner herein) and the petitioner has made the victim lie on *charpai* and was sitting on her. The petitioner opened his pant and was asking the victim to hold his private part. The complainant has seen all from the hole of the main gate of the petitioner's house. In this manner, the

asked him to open the door. The petitioner opened the door and her granddaughter came running to the complainant. She was scared and after returning to the house, she told the same to the complainant.

Counsel for the petitioner has referred to the statement of the prosecutrix recorded under Section 164 Cr.P.C. and submitted that there is no allegation in her statement under Section 164 Cr.P.C. that the petitioner was sitting on the victim and was asking her to hold his private part. There is a complete variance in the FIR version and the statement recorded under Section 164 Cr.P.C.

Learned State counsel, on instructions from SI Rajbir, has argued that the allegation against the petitioner are serious. The prosecutrix is about 9 years of age. The petitioner, who is a neighbour, has outraged the modesty of the girl and has committed heinous crime, as provided under the POCSO Act. He does not deserve the concession of bail.

I have heard learned counsel for the parties.

In the FIR, the allegation against the petitioner is that he made the victim lie on the *charpai* and sit on her. He opened his pant and asked the prosecutrix to hold his private part. But in the statement made by the victim under Section 164 Cr.P.C., it was stated that the incident took place in the street in front of the house where the petitioner came and put his hand in the pant of the prosecutrix and pressed. He shut her mouth and after some time when the mother of the prosecutrix has come to locate her, the petitioner took her to his house and locked the gate. The statement of the prosecutrix recorded under Section 164 Cr.P.C. (Annexure P-2) reads as under:-

is in front of the house. Then uncle Rajesh came and put his hand in my pant and pressed. He also shut my mouth. After some time my mother came looking for me, Rajesh uncle took me to his house and locked the gate. At that very time my mom reached his house and he got scared and let me go.”

There being a variance in the FIR version and the statement under Section 164 Cr.P.C. and the petitioner being in custody since 20.04.2019, this Court finds that the petitioner deserves to be admitted on bail.

Accordingly, the present petition is allowed and the petitioner is admitted on regular bail subject to his furnishing bail bonds/surety bonds to the satisfaction of trial Court.

It is made clear that the petitioner shall not extend any threat and shall not influence any prosecution witnesses in any manner directly or indirectly.

The observations made hereinabove shall not be construed as an expression on the merits of the case and the trial court shall decide the case on the basis of available material.

(HARI PAL VERMA)
JUDGE

24.07.2019
sanjeev

Whether speaking/reasoned?	Yes/No
Whether reportable?	Yes/No