

219.

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

CRM-M-31080-2019

Date of decision: 13.12.2019

RAJESH

.... Petitioner

versus

STATE OF HARYANA

.... Respondent

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Pradeep Chhoker, Advocate,
for the petitioner.

Mr. Baljinder Singh Virk, DAG, 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.145 dated 23.10.2018 registered under Section 6 of POCSO Act, 2012 (Sections 323, 506 of IPC added lateron) at Police Station Women, Sector 51, Gurugram, District Gurugram.

The aforesaid FIR was registered at the behest of Divya Vaishnav wife of Gaurav. She is working in BUD Foundation, Gurugram as Director. As per the FIR, it has come to her knowledge through secret information that two girls, namely, "K", daughter of Vijjan, and "C", daughter of Rajesh, are being sexually exploited. Whereas "C" is being exploited by her father Rajesh and "K" is being exploited by a friend of her mother.

Learned counsel for the petitioner has argued that neither the prosecutrix in her statement while appearing as PW1 nor the report received from the Regional Forensic Science Laboratory, Bhondsi (Gurugram) suggests the offence of commission of rape. He states that the petitioner is in custody since 24.10.2018 and he has falsely been implicated in the case.

Learned State counsel, on instructions from ASI Sunita, does not dispute the custody. However, he states that the prosecutrix in her statement under Section 164 Cr.P.C. has deposed against the petitioner and in this manner, merely because she has not supported the case while appearing as PW1, no benefit can be granted to the petitioner at this stage as it is during trial, it would be established as to whether the statement under Section 164 Cr.P.C. is to be given weightage or the statement while appearing before the trial Court is to be given priority.

I have heard counsel for the parties.

There is no dispute as regard the fact that the prosecutrix has been summoned as PW1. While appearing as such, she has rather resiled from her statement and she has specifically stated that she never met with the petitioner and has no occasion to have conversation with him. She has further stated that the petitioner has not done anything wrong with her at any point of time. Even otherwise, the FSL report attached with the petition dated 31.10.2018 does reflect that semen could not be detected on Exhibit-1 vaginal swab, exhibit-2 vaginal swab, exhibit 3 vaginal swab, exhibit-4 vaginal swab as well as in exhibit-5 underwear of the petitioner. Petitioner is in custody since 24.10.2018.

Considering the custody and the trial in the case is not likely to be concluded in the near future, 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 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

13.12.2019
sanjeev

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