

224.

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

CRM-M-34445-2019

Date of decision:29.08.2019

SADHU RAM

... Petitioner

versus

STATE OF HARYANA

.... Respondent

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Sushil Kumar Verma, Advocate,
for the petitioner.

Ms. Gaganpreet Kaur, 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, pending trial, in case FIR No.41 dated 01.05.2019 registered under Sections 376(2)(N), 328, 506, 451 of IPC, at Police Station Mahila Thana, Sirsa, District Sirsa.

The aforesaid FIR was registered at the behest of prosecutrix who is about 20 years of age, married and having one son, aged about 1 year. Since she has a dispute with her husband, she has come back to her parents house and started residing there along with the child. The petitioner, who is a resident of the same village, used to visit the neighbour's house for painting work. One day, the petitioner gave his mobile number to the prosecutrix to call him, but the prosecutrix did not contact him on his mobile number. However, on 17.03.2019 at about 11/11.30 PM, he came to the house of the prosecutrix and when the prosecutrix came in the courtyard for

committed rape upon her while taking her at the cattle-hood. He threatened the prosecutrix that in case she discloses the incident to any other family member, he will kill her. He also handed over to the prosecutrix a strip of tablets and said that if she feels pain in the stomach, then take these tablets. Thereafter, taking undue benefit of the occurrence, the petitioner used to commit wrong act with the prosecutrix against her wishes.

Counsel for the petitioner has argued that the prosecutrix is a matured lady, married and having one son. The allegation that the petitioner committed rape upon the prosecutrix, cannot be accepted, as the relations between them, if any, were consensual in nature. He has referred to the statement of the prosecutrix recorded under Section 164 Cr.P.C. wherein she had stated that she has started talking to the petitioner on phone and thereafter, the petitioner used to visit the house of the prosecutrix in the night time after a gap of 2/3 days and used to make physical relations with her. No prosecution witness has been examined. The trial in the case will take sufficient long time as only charge has been framed on 04.07.2019.

Learned State counsel, on instructions from ASI Ranbir Singh, states that no doubt the petitioner is in custody since 02.05.2019, but taking advantage of the situation, he has been committing sexual assault with the prosecutrix, not once, but repeatedly. The petitioner used to visit the house of the prosecutrix in odd hours so as to commit the offence of rape. The prosecutrix in the case has not been examined. The case is now fixed for 11.09.2019. In the event of admitting the petitioner on bail, there is a possibility that he may influence the witnesses.

I have heard learned counsel for the parties.

Petitioner is in custody since 02.05.2019. As per the FIR, the petitioner and the prosecutrix were meeting regularly. Therefore, at this stage, the argument of counsel for the petitioner that the relations between the parties were consensual in nature, though cannot be approved outrightly, but considering the fact that they were meeting regularly, this Court finds that the culpability of the petitioner is yet to be established during the trial. Moreover, no witness has been examined in the case so far and trial will take long time. Thus, 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.

However, in case the prosecution finds that the petitioner is influencing the witnesses in any manner, the prosecution is at liberty to seek cancellation of his bail.

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

29.08.2019
sanjeev

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