

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

(1) CRM-M-33825 of 2019.
Decided on:- October 18, 2019.

Rama Keshi.

.....Petitioner.

Versus

State of Punjab.

.....Respondent.

(2) CRM-M-36863 of 2019.

Amarjit Kaur @ Lovely.

.....Petitioner.

Versus

State of Punjab.

.....Respondent.

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

Present:- Mr. P.S. Dhaliwal, Advocate
for the petitioner in CRM-M-33825 of 2019.

Mr. J.S. Walia, Advocate
for the petitioner in CRM-M-36863-2019.

Mr. Sukhbeer Singh, A.A.G., Punjab.

HARI PAL VERMA, J. (Oral)

This order shall dispose of the aforesaid two petitions under
Section 439 Cr.P.C. for grant of regular bail filed by Rama Keshi and Amarjit

Kaur @ Lovely as the same have arisen from common FIR No.37 dated 23.03.2019 under Sections 376-D, 506, 342 and 120 IPC and Sections 3, 4, 5 and 6 of the Immoral Traffic Act registered at Police Station Kotwali Bathinda, District Bathinda.

However, for convenience and clarity, the detailed order is being passed in *CRM-M-33825 of 2019* titled as *Rama Keshi Versus State of Punjab*.

Learned counsel for petitioner Rama Keshi has argued that apart from the fact that the petitioners are in custody since 24.03.2019 and 23.03.2019 respectively, the allegations against petitioner Rama Keshi are that on 19.01.2019 at about 12.30 P.M., Rama Keshi daughter of Amar Keshi, who is friend of the prosecutrix, had come to the house of the prosecutrix and offer her that she will arrange for a job for her in a call centre at Chandigarh, where she is already working and knows many persons there. On her asking, the prosecutrix after taking necessary documents visited the house of Rama Keshi and after staying for some time in her house, petitioner-accused Rama Keshi took her to the house of Amarjit Kaur, co-accused. On asking of petitioner-accused Rama Keshi, the prosecutrix started living at the house of petitioner-accused Amarjit Kaur and started working there. The accused were keeping the prosecutrix in their house, but she was not allowed to go out of the house. On 1-2 February, 2019, Jassi and Shahrukh came to the house of Amarjit Kaur in a car. These accused took the prosecutrix, Amarjit Kaur and Rama Keshi to Krishna Continental Hotel at about 11.30 P.M., where Ali and Vicky, other accused, were already there. They booked two rooms in the

hotel. Thus, all of them had gone to one room, where party was started and they all consumed liquor. Even the prosecutrix was also forced to take liquor. Thereafter, Ali took the prosecutrix to the other room, where he established physical relationship with her against her wishes. After that, other co-accused, namely, Shahrukh, Vicky and Jassi also made physical relations with her turn by turn against her wishes. Petitioners-accused Rama Keshi and Amarjit Kaur were aware of it. Thereafter, the prosecutrix was taken to the house of Amarjit Kaur in a car, where she was threatened not to disclose about the occurrence. Thereafter, Avtar Singh, Azad, Pappu, Shinda and other unknown persons visited the house of accused Amarjit Kaur on different days and forcibly made physical relations with the prosecutrix against her wishes.

Learned counsel for petitioner Amarjit Kaur has argued that though there are allegations of establishing physical relations against accused Parminder Singh, who is known as Azad, but the trial Court has admitted him on bail vide order dated 15.07.2019.

Learned counsel for the petitioners have further argued that the petitioners are female and, therefore, the allegation under Section 376-D is not made out against them, as they have not committed rape and the allegation of rape, if any, is against other co-accused. At the most, the petitioners can be charged for offence under Sections 506 and 342 IPC. There is no such other offence in the FIR which may lead to abetment or to conspire in the commission of offence.

Learned State counsel, on instructions from Inspector Kashmir Chand, has argued that the petitioners are the main accused in the case as they

have facilitated the offence of rape by taking the prosecutrix to Krishna Continental Hotel, where rape was committed upon her by other co-accused. However, he has not disputed the custody and the fact that co-accused Parminder Singh, who is also known as Azad, has been admitted on bail by the trial Court on 15.07.2019.

I have heard learned counsel for the parties.

The petitioners are female. Hon'ble Supreme Court in ***Priya Patel Versus State of M.P. and another 2006(3) RCR (Criminal) 545*** has held that a woman facilitating the accused to commit rape upon the prosecutrix, is not guilty of commission of gang rape, as rape can be committed only by a man. Rape by a woman is conceptually inconceivable.

The petitioners are in custody since 24.03.2019 and 23.03.2019 respectively. The trial is not likely to be concluded in the near future as the charge is yet to be framed in the case. Therefore, in the light of the judgment of Hon'ble Supreme Court in ***Priya Patel's case (supra)*** and the fact that the culpability of the petitioners-accused is yet to be established during the trial, this Court finds that the petitioners deserve to be admitted on bail.

Accordingly, the present petition is allowed and the petitioners are ordered to be released on bail on their furnishing adequate bail and surety bonds to the satisfaction of learned trial Court.

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.

Photocopy of this order be placed on the file of other connected case.

October 18, 2019
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned:	Yes
Whether Reportable:	No