

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

CRM-M-41427 of 2019.  
Decided on:- October 01, 2019.

Hifajat.

.....Petitioner.

Versus

State of Haryana.

.....Respondent.

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

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Present:- Mr. Mohammad Arshad, Advocate  
for the petitioner.

Ms. Priyanka Sadar, A.A.G., Haryana.

Mr. Saleem Ahmed, Advocate  
for the complainant.

**HARI PAL VERMA, J. (Oral)**

Prayer in this petition filed under Section 439 Cr.P.C. is for grant of regular bail to the petitioner in FIR No.136 dated 03.06.2019 under Sections 376, 511 and 506 IPC and Section 4/18 of the Protection of Children from Sexual Offences Act, 2012 (for short, the POCSO Act) registered at Police Station Women, District Nuh, Mewat.

The aforesaid FIR was registered at the behest of prosecutrix with the allegation that on 01.06.2019 at about 09.00 P.M., when she had gone for toilet in the forest, suddenly the petitioner came and folded her in his arm from back side and hold her chest with bad intention and started

committing rape upon her forcibly. He loosened her trouser (Salvar). When the prosecutrix made a noise, Altaf son of Juhrukhan, Samun son of Magruddin, Aabid son of Suka etc. came on the spot and rescued her from the petitioner-accused.

As per the allegations, the petitioner-accused also threatened her with dire consequences and stated that if she will try to make any complaint, he will kill her. On hearing the noise, Aaka son of Wahid, who is brother of accused, Jahul son of Arukh, Aazad son of Shokat, Hafiz son of Salmuddin came on the spot armed with Lathi and Farsa and started giving beatings to her brothers Samun and Altaf as well as Aabid and forcibly started to release the petitioner.

Learned counsel for the petitioner has argued that during the course of investigation, the other co-accused, named in the FIR i.e. Aaka son of Wahid, Jahul son of Arukh, Aazad son of Shokat and Hafiz son of Salmuddin have been found innocent. The petitioner is in custody since 16.08.2019.

He has further argued that Salmuddin father of the petitioner had got an FIR No.465 dated 03.06.2019 under Section 323, 324, 365 and 506 read with Section 34 IPC at Police Station Nuh against the persons, who had allegedly rescued the prosecutrix and in this background, the present FIR had been registered against the petitioner. Further, no medical examination of the prosecutrix has been conducted in the case, rather, the prosecutrix herself had refused to undergo such medical examination.

At this stage, learned counsel for the complainant has argued that the petitioner had tried to commit rape upon the prosecutrix when she was alone and he threatened to kill her in case she discloses the incident to any other person.

Learned State counsel, on instructions from ASI Shobha Rani, does not dispute the period of custody of the petitioner and admits the fact that the prosecutrix had refused to undergo medical examination. She is fair enough to state that the other co-accused persons were found innocent during investigation.

I have heard learned counsel for the parties.

The petitioner is in custody since 16.08.2019. The other co-accused, who allegedly helped the petitioner, were found innocent during investigation by the police. Further, Salmuddin father of the petitioner had got an FIR No.465 dated 03.06.2019 under Section 323, 324, 365 and 506 read with Section 34 IPC at Police Station Nuh against the persons, who had allegedly rescued the prosecutrix. Moreover, the prosecutrix herself had refused to undergo medical examination. Thus, when the culpability of the petitioner is yet to be established during trial, this Court finds that the petitioner deserves to be admitted on bail.

Accordingly, 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.

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.

October 01, 2019  
Yag Dutt

(HARI PAL VERMA)  
JUDGE

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|----------------------------|-----|
| Whether speaking/reasoned: | Yes |
| Whether Reportable:        | No  |