

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

206

CRM-M-42814-2019

Date of Decision:19.10.2019

Amrik Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

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

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

Mr. Sukhbeer Singh, AAG, Punjab.

Ms. Gagandeep Kaur, 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.225 dated 26.08.2019 under Sections 376, 354-C IPC and Section 4 of the Protection of Children form Sexual Offences Act, 2012, registered at Police Station Sadar Dhuri, District Sangrur.

Power of attorney filed on behalf of the complainant today in the Court, is taken on record.

The aforesaid FIR was registered at the behest of the prosecutrix. The petitioner aged about 33 years is uncle(real Fufar) of the prosecutrix. As per FIR in the month of August 2018, when the prosecutrix was in the house of the petitioner and had gone for bathroom so as to take

bath, she noticed that the petitioner was making her video on his mobile phone, while she was taking bath. Then she noticed that out of fear, he (petitioner) went away and in the evening at about 8 PM, the petitioner returned back after consuming liquor. The prosecutrix served food to the children(cousin sisters of the prosecutrix) and the petitioner. After noticing the fact that the petitioner has taken her video of the day of incident, the prosecutrix was under fear, but nobody was there at home with whom she could talk about this incident. However, after finishing the household works, three folding beds were laid in the courtyard. The petitioner was lying on one bed, her sisters Harman and Suman were lying on the second bed, whereas the prosecutrix was lying on the third bed. In the late night when all of them were sleeping, petitioner suddenly came to the prosecutrix and put his hand on her(prosecutrix) mouth and closed her mouth and came on top of her. He forcibly removed her salwar and raped her. The prosecutrix moved her legs and arms and tried to wake up her sisters with the help of hand who were sleeping next to her and by the time her sister Harman could woke up, the petitioner has gone to his bed for sleeping. She spent the whole night sitting in fear. However, when talks about her marriage were being discussed, the prosecutrix disclosed this fact to her mother and accordingly, the FIR was registered.

Learned counsel for the petitioner has argued that apart from the fact that the matter has been compromised between the parties vide compromise dated 18.09.2019 (Annexures P-2 and P-3), there is no medical evidence to support the case of the prosecutrix that rape was ever committed upon her. Petitioner is in custody since 31.08.2019 and on the basis of compromise, a separate petition i.e. **CRM-M-42824-2019 (Amrik Singh**

Versus State of Punjab and another) for quashing of FIR in question has also been filed by the petitioner. The chances of conviction are quite bleak as prosecutrix is not likely to support the case.

Learned counsel for the complainant does not dispute the compromise arrived at between the parties.

Learned State Counsel, on instructions from ASI Sukhchain Singh, submits that the prosecutrix is aged about 17 years and 07 months and therefore, POCSO Act has been invoked. The allegations against the petitioner are serious. However, he submits that FSL report in the case is awaited.

Heard learned counsel for the parties.

No doubt, the petitioner is real uncle(Fufar) of the prosecutrix, but at the same time, now the matter has been compromised between the parties. At this stage, this Court finds that in the absence of any medical evidence and even medical examination of the prosecutrix was conducted after one year of the incident, the prosecution is yet to establish its case as FSL report has not been received in the case. Trial in the case is not likely to be concluded in the near future. Therefore, 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 adequate bail bonds/surety bonds to the satisfaction of trial Court.

However, the observations made hereinabove shall not be construed as an expression on the merits of the case and the trial Court shall proceed with the trial independently without being influenced by the order of bail passed by this Court.

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

October 19, 2019
seema

(HARI PAL VERMA)
JUDGE

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