

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

CRM-M-42970 of 2019.
Decided on:- October 31, 2019.

Anil.

.....Petitioner.

Versus

State of Haryana.

.....Respondent.

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

Present:- Mr. Bhisham Kumar Majoka,
Advocate for the petitioner.

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

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.98 dated 01.02.2018 under Sections 363, 450 and 506 IPC as well as Section 6 of the Protection of Children from Sexual Offences Act, 2012 (for short, the POCSO Act) registered at Police Station Women, N.I.T., Faridabad.

Learned counsel for the petitioner has argued that the petitioner is in custody since 14.12.2018. In fact, the very contents of the FIR are highly improbable. The first instance has allegedly taken place on 12.11.2018 at 12 O'clock in the night when the prosecutrix was allegedly kidnapped by the accused including the petitioner and the second instance is dated 01.12.2018

again in the similar circumstances. Despite the fact that the alleged incident had taken place on 12.11.2018, she had not reported the matter to the police.

He has further argued that on 01.12.2018, the prosecutrix had made a statement under Section 164 Cr.PC, but thereafter, the prosecution had moved another application for recording the statement of prosecutrix under Section 164 Cr.PC, which the learned Magistrate did not allow to do so. He has referred to the statement of the prosecutrix made before the trial Court as PW4 to contend that she had made allegations that the petitioner and other co-accused Hari Bhagat, Shakil and Bhoot committed rape upon her, but the medical evidence does not support such allegations.

When this Court has asked for medical evidence, learned State counsel has produced the copy of FSL report dated 20.12.2018, wherein on medical examination, the result suggests that the semen could not be detected on exhibit-1 (vaginal swab), exhibit 2a (underwear), exhibit-2b (lower), exhibit-11 (piece of a blanket) and exhibit-12 (Dari). The copy of FSL report is taken on record.

I have heard learned counsel for the parties.

Considering the fact that the petitioner is in custody since 14.12.2018 and the prosecution had made another attempt for recording the statement of prosecutrix under Section 164 Cr.PC coupled with the fact that in the FSL report, semen could not be detected on the exhibits, this Court finds that the petitioner deserves to be admitted on bail as his culpability is yet to be decided during the trial.

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 31, 2019
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No