

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

202

CRM-M-43239-2019

Date of Decision:19.12.2019

Amit

.....Petitioner

Versus

State of Haryana

.....Respondent

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

Present: Mr. Paramjeet Phor, Advocate,
for the petitioner.

Ms. Priyanka Sadar, AAG, Haryana.

HARI PAL VERMA, J.(Oral)

Prayer in this 2nd petition filed under Section 439 Cr.P.C. is for grant of regular bail to the petitioner in FIR No.294 dated 11.04.2018 under Sections 342, 506 IPC and Section 4 of the POCSO Act, 2012, registered at Police Station Assandh, Karnal, District Karnal.

The earlier petition i.e. CRM-M-17278-2019 was dismissed as withdrawn vide order dated 17.07.2019. Learned counsel for the petitioner states that at the time when the earlier petition was withdrawn, the prosecutrix was not examined in the case.

The aforesaid FIR was registered at the behest of the prosecutrix. As per FIR on 10.04.2018 at about 11.45 AM, the prosecutrix was alone at her house. Sachin her neighbour called her and told the prosecutrix that his aunt is calling her. On the asking of Sachin, she has gone to his aunt's house, where she found Sachin and his aunt's son Amit.

Except these two persons, no other person was present there. Both of them caught hold the prosecutrix forcibly and Sachin bolted the door from outside. Amit committed bad act with the prosecutrix without her consent and threatened her with dire consequences and asked her not to disclose it to someone. After about one hour, Sachin unbolted the door and the prosecutrix went to her house.

Learned counsel for the petitioner has argued that in the present case, the prosecutrix was subjected to medical examination, but no such mark of internal or external injury was found on her person. Even otherwise, FSL report has been received in the case on 02.08.2018, where laboratory examinations were carried out to detect the presence of semen on the exhibits by performing chemical test and microscopy. Based upon these examinations, it has been reported that semen could not be detected on any of the exhibits mentioned in the description of article(s) contained in the parcel(s). In the absence of medical evidence as reported in the FSL report, it has not been established that the petitioner has committed the offence as alleged in the FIR. Even otherwise, petitioner is in custody since 13.04.2018. Now the prosecutrix in the case has already been examined and therefore, petitioner is not likely to influence the witnesses. As against total 16 witnesses cited by the prosecution, only 08 witnesses have been examined, trial in the case is not likely to concluded in the near future.

Learned State Counsel does not dispute the custody period. However, she states that the prosecutrix is consistent about her case including her statement recorded under Section 164 Cr.P.C. and while examined as PW2. She further states that though the FSL report does not support the case of the prosecution, however, sufficient evidence is there so

as to convict the petitioner in the case.

Heard learned counsel for the parties.

Admittedly, petitioner is in custody since 13.04.2018. FSL report received in the case attached with the petition as Annexure P-1, dated 02.08.2018 suggests that semen could not be detected on any of the exhibits mentioned in the description of article(s) contained in parcel(s). Thus, in the absence of medical evidence, this Court finds that culpability of the petitioner is yet to be established during the course of trial. Moreover, as against total 16 witnesses cited by the prosecution, only 08 witnesses have been examined in the case. In this manner, trial is not likely to be concluded in the near future. Therefore, 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/Duty Magistrate.

However, it is made clear that 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.

December 19, 2019
seema

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No