

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Misc.-M-44324 of 2019

Date of Decision: October 24, 2019.

Pardeep Kumar

.....Petitioner

versus

State of Haryana

.....Respondent

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

Present: Mr.Sandeep Gahlawat, Advocate, for the petitioner.

Ms.Gagandeep Kaur, AAG, Haryana.

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Hari Pal Verma, J. (Oral)

Prayer in this second petition under Section 439 Cr.P.C. is for grant of regular bail to the petitioner in case FIR No.229 dated 20.08.2018, registered under Sections 363 & 366-A IPC (Sections 193, 420, 467, 468, 471, 120-B IPC, Section 3(ii)(v) of SC & ST Act, 1989 and Section 6 of POSCO Act added later on), Police Station City Narwana, District Jind.

Learned counsel for the petitioner states that earlier petition filed by the petitioner was dismissed as withdrawn for the reason that the prosecutrix was not examined at that time. He refers to the statement of the prosecutrix dated 20.09.2018 recorded under Section 164 Cr.P.C., to contend that the prosecutrix has made statement that since her mother wanted to sell her and she (mother) was staying with one Arun, who wanted to commit wrong act with her, therefore, she went alongwith the petitioner and then solemnized marriage with him. She has solemnized marriage with her free will and without any kind of pressure of anybody and therefore, she wanted to stay with her husband (petitioner) at his house. Learned counsel

for the petitioner further refers to the statement of the prosecutrix dated 02.10.2018 in FIR No.226 dated 01.10.2018, got registered by her against her mother and two more accused namely Arun and Ravi @ Pintu wherein she has stated that her mother Mithlesh is residing with Arun and Pintu and they have committed wrong act upon her. She further stated that 3-4 more persons have also committed wrong act with her as these persons were called by her mother. She further stated that her mother used to threaten her that in case she will tell anything about her relationship then she will get her father (father of the prosecutrix) and brother killed. Thereafter, she ran away from the house of her mother and went with the petitioner. She has further stated that she stayed with the petitioner for 10-12 days in order to save her life and the petitioner has not committed wrong act with her. It is argued by learned counsel for the petitioner that the petitioner and victim Anjali had approached this Court by way of CRM-M-41434 of 2018 (Anjali and another versus State of Haryana and others), wherein she has got protection on the ground of marriage having attained the age of maturity and this Court while issuing directions to the police authorities, had ordered to ensure that life and liberty of the petitioners is protected by providing them adequate protection after carrying out a threat assessment. The petitioner is in custody since 23.10.2018 and out of 20 prosecution witnesses, only 8 have been examined so far.

Learned counsel for the petitioner further argued that despite having made statement under Section 164 Cr.P.C., the prosecutrix has now deposed against the petitioner while appearing as PW-3, alleging therein that the petitioner has established sexual relationship with her against her wishes and she has projected her age as 18 years at the instance of the

accused-petitioner, despite having suffered statement under Section 164 Cr.P.C. at two different occasions.

Learned State counsel, on instructions from ASI Jasbir Singh, has argued that no doubt the prosecutrix has made statement under Section 164 Cr.P.C. at two different times and had also approached this Court by way of protection petition on the ground of solemnization of marriage, however, such statement including projection of date of birth was made at the instance of the petitioner. Therefore, the petitioner cannot take any advantage of such statement, more so when the prosecutrix was minor and the allegations against the petitioner are serious. Therefore, the petitioner is not entitled for the relief of regular bail.

I have heard learned counsel for the parties.

The petitioner is in custody since 23.10.2018. There are 20 prosecution witnesses cited in the case and only 8 have been examined so far. The prosecutrix has made statement on two occasions, one in the present FIR No.229 and another in FIR No.226 registered against her mother and two other accused persons, wherein she has alleged that Arun and Pintu and 3-4 other persons have committed wrong act with her. The fact remains that the prosecutrix and the petitioner have approached this court for protection wherein the prosecutrix has projected herself that she has acquired the age of maturity. At this stage, no medical evidence is coming on record to establish that rape was committed upon the prosecutrix as DNA report has not been received in this case.

In view of the fact that the petitioner is in custody since 23.10.2018 and trial will take sufficient long time, no useful purpose will be served to keep the petitioner in custody, 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 the trial Court, subject to further condition that the petitioner will not influence the witnesses directly or indirectly in any manner. He will not approach the prosecutrix in any manner and he shall not reside within the vicinity where the victim is residing and till the trial is concluded. For any violation, the prosecutrix shall be at liberty to seek cancellation of the bail.

October 24, 2019 <i>mohinder</i>		(HARI PAL VERMA) JUDGE
Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No