

**In The High Court for the States of Punjab and Haryana
At Chandigarh**

CRM-M-44379-2019 (O&M)
Date of Decision:- 23.10.2019

Vinod ... Petitioner

Versus

State of Haryana ... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Parminder Singh, Advocate, for the petitioner.

Ms. Aditi Girdhar, AAG, Haryana.

GURVINDER SINGH GILL, J. (Oral)

1. Petitioner-Vinod, seeks grant of regular bail in a case registered vide FIR No.37, dated 1.6.2019, registered at Women Police Station, Assandh, District Karnal, under Sections 365, 376-DB/325 IPC and under Sections 6 and 17 of POCSO Act.
2. The FIR was lodged at the instance of Avdesh Paswan, father of the victim wherein it has been alleged that on 31.5.2019, he along with other members of his family went to sleep after taking meals.

However, at about 12 in the night, he heard cries of his daughter and upon getting up, he saw that Dinesh was committing forcibly sexual intercourse with his daughter and that two other unidentified boys were also there and who upon seeing the complainant ran away from the spot.

3. Learned counsel for the petitioner has submitted that he has falsely been involved in the present case and that he is neither named in the FIR nor did the victim name him when her statement was recorded in terms of Section 164 Cr.P.C. wherein she specifically named one Dinesh and one Khilawan to be the persons who had committed rape upon her.
4. Opposing the petition, learned State counsel has submitted that since in the FIR it is specifically mentioned that there were three persons at the spot, out of which 2 persons were unidentified and that subsequently the complainant (father of victim) in his statement recorded under Section 164 Cr.P.C. has named the petitioner to be one of the accused and in fact one of the accused Khilawan in his disclosure statement has also named the petitioner to be his co-accused, no case for grant of bail is made out.
5. I have considered rival submissions addressed before this Court. A perusal of the statement of the victim recorded under Section 164 Cr.P.C. as reproduced in para No.4 of the petition clearly shows that she has categorically named Dinesh and Khilawan to be the accused and has not named the present petitioner to be accompanying the said accused. Further, the prosecution is relying upon the disclosure

statement of co-accused Khilawan, but it appears that said Khilawan had made two different disclosure statements and while on one occasion he stated that he was accompanied by Deepak and Dinesh, in another disclosure statement has stated that he was accompanied by Vinod and Dinesh who had disconnected the electricity supply at the time of occurrence.

6. I have considered rival submissions addressed before this Court. It will certainly be debatable as to whether the petitioner was present along with other co-accused at the time of the occurrence or not, in view of the fact that even in the disclosure statements of co-accused different versions regarding presence of the petitioner are forthcoming. Keeping in mind the aforestated position and the fact that the petitioner is not named in the statement of the prosecutrix recorded under Section 164 Cr.P.C. and that he has been behind bars since the last more than 4 months, further detention of the petitioner will not serve any useful purpose as the trial is likely to take some time for its conclusion. The petition, as such, is accepted and petitioner-Vinod is ordered to be released on regular bail on his furnishing bail bonds/surety bonds to the satisfaction of learned trial Court/Chief Judicial Magistrate/Duty Magistrate, concerned.

October 23, 2019

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**(GURVINDER SINGH GILL)
JUDGE**

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No