

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

CRM-M-44651 of 2019.

Decided on:- November 25, 2019.

Makhan Singh.

.....Petitioner.

Versus

State of Punjab.

.....Respondent.

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

Present:- Mr. P.K.S. Phoolka, Advocate
for the petitioner.

Mr. Saurav Khurana, D.A.G., Punjab.

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.20 dated 06.02.2019 under Sections 376, 114, 506 and 120-B IPC registered at Police Station Sangat, District Bathinda.

As per the FIR, the petitioner and his wife Karamjit Kaur lives at a little distance from the house of the prosecutrix. On 03.02.2019, they came to the house of prosecutrix and told her parents that on that day, there was turn of the petitioner to irrigate his field and as his son Jagdish and daughter Gurpreet Kaur had gone to village Chanu so as to attend a marriage, the prosecutrix be sent to the house of the petitioner, so that she could sleep with Karamjit Kaur wife of the petitioner in the night. Reposing faith in the

petitioner and his wife, the parents of the prosecutrix sent her to the house of the petitioner to sleep in the night with Karamjit Kaur. However, the petitioner did not go for water-turn as projected and at about 01.30 A.M. in the night when the prosecutrix and Karamjit Kaur wife of the petitioner were sleeping in a room, the petitioner came there and laid on the cot of prosecutrix and started doing bad activities with her. However, when the prosecutrix tried to make noise and refused him, Karamjit Kaur also came to the prosecutrix and hold her arms. The petitioner forcibly removed the clothes of prosecutrix and committed rape upon her without her consent. She kept on crying, but the petitioner and Karamjit Kaur left her at her house at about 04.00 A.M. in the morning and threatened her not to disclose this fact to her family and in case she will disclose anything, they shall harm her and her family.

Learned counsel for the petitioner has submitted that the petitioner is in custody since 06.02.2019 and despite availing as many as 9 opportunities, the prosecutrix has not come forward to depose in the case. He has referred to the *zimni* orders passed by the trial Court, wherein vide order dated 03.09.2019, even bailable warrant of the prosecutrix and other prosecution witness Murti Kaur were issued for 12.09.2019. He has referred to the orders dated 12.09.2019 and 23.09.2019 passed by the trial Court to contend that despite having availed numerous opportunities, the prosecutrix has not come forward to depose in the case.

Learned State counsel does not dispute the custody and the fact that number opportunities were granted to the prosecution for examination of the prosecutrix in the case. He further states that now the case is fixed for

recording prosecution evidence on 30.11.2019 and a direction be issued to the trial Court to examine the prosecutrix on that date. He further states that the FSL report in the case is awaited.

I have heard learned counsel for the parties.

The petitioner is in custody since 06.02.2019. Despite availing 9 opportunities by the prosecution, the prosecutrix has not come forward to depose in the case. It appears that the prosecutrix is intentionally delaying the trial and for this reason, the petitioner cannot be allowed to suffer. Moreover, the FSL report in the case has not been produced so far. Therefore, this Court finds that the petitioner deserves to be admitted on bail.

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.

November 25, 2019

Yag Dutt

**(HARI PAL VERMA)
JUDGE**

Whether speaking/reasoned: Yes

Whether Reportable: No