

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

227

CRM-M-45381-2019

Date of Decision:30.10.2019

Jamshed

.....Petitioner

Versus

State of Haryana

.....Respondent

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

**Present: Mr. Saleem Ahmed, Advocate,
for the petitioner.**

Ms. Priyanka Sadar, AAG, Haryana.

**Mr. Gurdas Singh, Advocate,
for the complainant.**

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.144 dated 26.06.2019 under Sections 342, 376, 506 IPC, 1860 and Section 67-A of the Information & Technology Act, 2008, registered at Police Station Women, Nuh, District Nuh.

Power of attorney filed on behalf of the complainant today in the Court, is taken on record.

The aforesaid FIR was registered at the behest of the prosecutrix with the allegation that on 21.06.2019 at about 9 AM, she was going to Nelhar Medical College for her treatment and has reached at bus stand Nuh, at about 12 noon and was waiting for the vehicle at bus stand

Nuh, in the meantime, petitioner(Jamshed) came in a car and while stopping

his car asked the prosecutrix as to what for she is standing here. The prosecutrix has informed the petitioner that she has skin problem and is going to Nelhar Medical College. The petitioner informed the prosecutrix that at Tauru, there was a good doctor and he will get her treated from that doctor located at Tauru. The prosecutrix sat in his vehicle but instead of taking her to the doctor, he took her to Bhiwari and stopped his car near a hotel. When the prosecutrix questioned that it is not a shop of the doctor, the petitioner replied that he will call the doctor in the hotel only. He confined the prosecutrix in a room and by pointing the knife towards her, asked the prosecutrix to remove all her clothes. He committed rape upon her many times and has taken her photographs in the nude condition with the threat that if she will disclose this fact to anybody, he will upload these photographs on the facebook and will defame her. He confined her in that room in night. On the next day at about 10 O'clock, she was left at Punhana bus stand. Her brother has noticed the nude photographs of the prosecutrix which the petitioner accused uploaded on the facebook upon which she (prosecutrix) had disclosed the whole story to her brother.

Learned counsel for the petitioner has argued that the petitioner is in custody since 30.07.2019. The alleged incident took place on 21.06.2019 and medical of the prosecutrix was conducted on 27.06.2019, where rape has not been established. Even the FSL report has not proved the allegation of rape. He further states that the victim has given an affidavit(Annexure P-3) stating therein that the FIR was lodged against the petitioner at the instance of her family members and the photographs which are viral were not of her photographs. These photographs were not viral by the petitioner. He has never committed any wrong act with her. He further

refers to the compromise-deed dated 01.10.2019(Annexure P-2), whereby the prosecutrix has submitted that she regrets for lodging the FIR and does not want to take any legal action against the petitioner as the compromise has been written in the case without any fear and with her free will.

At this stage, learned counsel for the complainant has put in appearance and does not dispute the factum of compromise.

Learned State Counsel does not dispute the custody period. However, she states that prosecutrix is yet to be examined in the case.

Heard learned counsel for the parties.

In the case in hand, after getting criminal proceedings initiated against the petitioner, the complainant has taken a U-turn. In her initial version of FIR, she is very specific about rape having been committed by the petitioner upon her, but at a later stage, she entered into a compromise-deed dated 01.10.2019(Annexure P-2) and has also furnished an affidavit (Annexure P-3) denying the very allegation made in the FIR. In this manner, the conduct of the prosecutrix cannot be ignored outrightly and this Court expects that the trial court shall take note of the conduct of the prosecutrix during trial.

Admittedly, the petitioner is in custody since 30.07.2019 and the prosecutrix has not supported the case of the prosecution as reflected in the compromise-deed dated 01.10.2019(Annexure P-2) and the affidavit (Annexure P-3), coupled with the fact that trial in the case is not likely to be concluded in the near future, 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 adequate bail

bonds/surety bonds to the satisfaction of trial Court.

It is made clear that the petitioner shall not extend any threat and shall not try to influence any prosecution witnesses directly or indirectly in any manner.

October 30, 2019
seema

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No