

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

CRM-M-45350 of 2019.

Decided on:- November 22, 2019.

Gulshan.

.....Petitioner.

Versus

State of Haryana.

.....Respondent.

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

Present:- Mr. Ankur Lal, Advocate
for the petitioner.

Ms. Gaganpreet Kaur, A.A.G., Haryana.

Mr. Aditya Sanghi, Advocate
for the complainant.

HARI PAL VERMA, J. (Oral)

This is the second petition under Section 439 Cr.P.C. filed by the petitioner for grant of regular bail in FIR No.459 dated 21.06.2019 under Section 376 IPC registered at Police Station Mujesar, District Faridabad.

The aforesaid FIR was registered on the statement of prosecutrix aged about 21 years, who has completed her B.Com from K.L. Mehta College. As per the FIR, the prosecutrix knew the petitioner for about one year as they met at some birthday party of some common friend. Thereafter, they become friends through *facebook* and used to talk daily on phone. Number of times, the prosecutrix along with her sister Kaajal had gone for movie with the petitioner. On 09.05.2019, it was the birthday of the petitioner, but as the prosecutrix were to appear in B.Com. (Part III) examination, the same could not be celebrated on 09.05.2019. Thereafter, on 16.05.2019, the petitioner in order to celebrate his birthday party had taken the prosecutrix to

Hotel Oyo, which is situated at a little distance from her house. They reached the hotel at about 02.00 A.M. in the night, where the petitioner and the prosecutrix celebrated the birthday party and cut the cake. During this meeting, the petitioner committed wrong act with her against her consent and had asked the prosecutrix not to disclose the same to anybody. The prosecutrix has come to know that the petitioner was eyeing on her sister Kaajal as well and had developed friendship with her. She had taken her sister Kaajal into confidence and Kaajal disclosed everything to her. Thereafter, the prosecutrix share this fact to her parents.

Learned counsel for the petitioner has argued that in the case in hand, the petitioner is in custody since 12.09.2019. The alleged incident had taken place on 16.05.2019, but the FIR was registered on 21.06.2019. The petitioner and the prosecutrix were known to each other and this fact can be substantiated with the photograph so attached with the petition. He submits that the relations between the petitioner and prosecutrix, if any, were absolutely consensual. There is no medical evidence so as to implicate the petitioner in the case. The conclusion of trial will take long time as only 4 witnesses have been examined in the case so far as against the total 15 witnesses cited by the prosecution.

Mr. Sanghi, learned counsel for the complainant has argued that the allegations against the petitioner are quite serious. The prosecutrix has been examined in the case and she has supported the case of the prosecution. The petitioner has an evil eye even on the younger sister of the prosecutrix for which a separate FIR No.125 dated 19.07.2019 under Sections 354-A(1) (iii), 354-D and 506 IPC registered at Police Station Women, NIT Faridabad. He

has referred to some *WhatsApp* messages exchanged between the petitioner and prosecutrix showing therein that he is indulging in cricket *Satta*.

He further states that in case the petitioner is enlarged on bail, he may influence the prosecution witnesses and it would affect the victim in other FIR i.e. FIR No.125 dated 19.07.2019. The intention of the petitioner from the very beginning is to cheat the prosecutrix and, rather, he has started having an evil eye on her younger sister.

Learned State counsel has more or less adopted the same arguments as put forward by learned counsel for the complainant. However, she submits that once the prosecutrix has supported the prosecution case and the allegations against the petitioner are serious, the petitioner is not entitled to bail.

I have heard learned counsel for the parties.

The petitioner is in custody since 12.09.2019. The alleged incident had taken place on 16.05.2019 when the prosecutrix was taken to a hotel, where the rape was allegedly committed upon her. However, the matter was reported to the police on 21.06.2019. The copy of medical examination report attached with the petition does not specifically spell out that the sexual intercourse was committed by the petitioner. The photographs (Annexure P-2) show close intimacy of the petitioner with the prosecutrix. The prosecutrix is aged about 21 years, whereas the petitioner is 19 years of age. In this manner, as compared to the petitioner, she has attained more majority.

Considering the fact that the prosecutrix has been examined in the case, there is no possibility to influence her in any manner. This Court has been apprised by learned counsel for the petitioner that as against total 15

witnesses cited by the prosecution, only 4 witnesses have been examined in the case. Therefore, when conclusion of trial is likely to take a long time, 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.

However, it is made clear that in case the petitioner influences the remaining prosecution witnesses in any manner directly or indirectly, the prosecution shall be at liberty to seek cancellation of his bail.

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 22, 2019
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No