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

CRM-M-61935-2018

Date of Decision:14.01.2019

Krishan Kumar @ Harkrishan

.....Petitioner

Versus

State of Punjab

.....Respondent

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

Present: Mr. Harshit Jain, Advocate,
for the petitioner.

Mr. Jagmohan Ghumman, 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.0021 dated 24.01.2018 under Sections 363, 366-A, (the offence punishable under Section 120-B IPC was deleted and the offence punishable under Sections 3 & 4 of POCSO Act, 2012 was added later on), registered at Police Station City Khanna, District Ludhiana.

Learned counsel for the petitioner states that the prosecutrix has not supported the case of the prosecution in her statement recorded under Section 164 Cr.P.C. as well as during her evidence before the trial court. He has argued that in the statement recorded under Section 164 Cr.P.C., the prosecutrix has stated that on 20.01.2018, the prosecutrix alongwith Ritu, who is wife of the petitioner aged about 22 years, had gone out for leisure trip. Ritu was accompanied with her two years old son, whereas the petitioner was

not with them. She has gone with Ritu at her own will and they roamed around in Ludhiana for 10-12 days. Ritu is friend of the prosecutrix. Similarly, he referred to the statement of the prosecutrix, who while appearing as PW3, has stated that on 02.02.2018 when the statement was recorded under Section 164 Cr.P.C. before the Magistrate, she was alone and no one had accompanied her at that time. No one was present in the court room with her and her parents were outside the court, whereas the statement under Section 161 Cr.P.C. was recorded on 01.02.2018 in the presence of her parents.

Learned State Counsel has filed the custody certificate of the petitioner and does not dispute the custody period. But he states that the prosecutrix being about 16 years of age, the offence committed by the petitioner is serious. He states that the report of the chemical examiner support the case of the prosecution.

I have heard learned counsel for the parties.

The statement of the prosecutrix under Section 164 Cr.P.C. dated 02.02.2018 is attached with the petition does not suggest that the prosecutrix has made the allegation about rape having been committed by the petitioner. Similarly, in her statement, while appearing as PW3, she has not supported the case of the prosecution.

The statement under Section 161 Cr.P.C. so made wherein the prosecutrix has made the allegation against the petitioner is unsigned and, therefore, having considered the statement made by the prosecutrix under Section 164 Cr.P.C. and her evidence adduced while appearing as PW3, this Court finds that the culpability of the petitioner is required to be established during the trial.

So far as the report of the Chemical Examiner though reported positive but it is yet to be established as to whether the semen if any was detected were of the petitioner or some other person.

Accordingly, 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.

It is made clear that the petitioner shall not directly or indirectly influence the witnesses or trial in any manner and in case it is found that he is extending any threat, the prosecution shall be at liberty to seek cancellation of his bail.

The observations made hereinabove shall not be construed as an expression on the merits of the case and the trial court shall decide the case on the basis of available material.

(HARI PAL VERMA)
JUDGE

14.01.2019

sanjeev/seema

Whether speaking/reasoned Yes/No.

Whether Reportable: Yes/No.