

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

CRM-M-54630 of 2018.

Decided on:- February 28, 2019.

Rohit.

.....Petitioner.

Versus

State of Punjab.

.....Respondent.

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

Present:- Mr. Karan Garg, Advocate
for the petitioner.

Mr. Rana Harjasdeep Singh, D.A.G, Punjab.

HARI PAL VERMA, J. (Oral)

Prayer in this petition filed under Section 439 of the Code of Criminal Procedure, 1973 is for grant of regular bail to the petitioner in FIR No.113 dated 05.07.2018 under Sections 376 and 328 of the Indian Penal Code, 1860 registered at Police Station Canal Colony, District Bathinda.

As per the FIR, on 24.06.2018, the prosecutrix along with her husband had gone to the house of Tejpal Singh, maternal uncle of her husband. On 28.06.2018, the petitioner, who is son of the maternal aunt of the husband of the prosecutrix, namely, Krishna Devi resident of Kotkapura (Maasi's son) also came there. Her husband, Mama Tejpal and petitioner Rohit had taken liquor. Thereafter, they had gone to buy ice-cream. When they came back after taking ice-cream, the petitioner gave her ice-cream in a bowl, which the prosecutrix had taken. After some time, she felt

unconsciousness and fell asleep. However, in the midnight, she came to know that somebody was doing indecent things with her. When she caught him from his arms, then on the basis of Karas, she came to know that it was petitioner Rohit. She tried to oppose him but he caught her from her hands. Her husband was under the influence of liquor, whereas his maternal uncle's son, namely, Kartik was sleeping with him. The prosecutrix tried to raise a hue and cry, but the petitioner put his hand on her mouth and she cried, but her voice could not reach the adjoining room of Mama Tejpal and Mami Neelam, who were sleeping there. In this manner, the petitioner committed rape upon the prosecutrix.

Learned counsel for the petitioner has argued that apart from the fact that the prosecutrix has not consented for medical examination, the rape cannot be committed more particularly when the prosecutrix was sleeping in the adjoining room where Tejpal and her wife were sleeping. Moreover, husband of the prosecutrix was also in the same building and was sleeping with his maternal uncle's son Kartik @ Manni aged about 31 years. The petitioner is in custody since July 06, 2018.

On the other hand, learned State counsel, on instructions from HC Malkit Singh, has argued that the prosecutrix has been examined before the trial Court and she has supported the case of the prosecution. Therefore, there is no ground to admit the petitioner on bail.

I have heard learned counsel for the parties.

In the FIR, the prosecutrix has stated that the petitioner had sent Whatsapp messages on the mobile phone of her husband confessing therein

that he has committed mistake and he is ashamed of this incident and will not repeat the mistake. He had requested for forgiveness, but while being cross-examined before the trial Court, the prosecutrix has admitted that the Whatsapp messages, as referred in the statement, were never produced before the police during the course of investigation. The petitioner is in custody since 06.07.2018 and as against the 8 prosecution witnesses, only 2 witnesses have been examined so far. Therefore, conclusion of trial will take sufficient long time.

Therefore, 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.

February 28, 2019
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No