

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

CRM-M-52244 of 2019.

Decided on:- December 12, 2019.

Irshad.

.....Petitioner.

Versus

State of Haryana.

.....Respondent.

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

Present:- Mr. Rakesh Gupta, Advocate for the petitioner.

Ms. Priyanka Sadar, A.A.G., Haryana.

HARI PAL VERMA, J. (Oral)

The petitioner has filed present petition under Section 439 Cr.P.C. for grant of regular bail in FIR No.238 dated 05.10.2018 under Section 376 IPC as well as Section 4 of the Protection of Children from Sexual Offences Act, 2012 registered at Police Station Bhondsi, District Gurugram.

The aforesaid FIR was registered at the behest of the complainant, who happens to be father of the prosecutrix, who is aged about 14 years. As per the FIR, on 04.10.2018 at about 10.30 P.M., the prosecutrix was changing the buffalos and at that time, Khanak, who is wife of the petitioner called her to her house. After some time, the complainant and his wife noticed that their daughter had not come back to home. Therefore, they went to the house of Irshad (petitioner herein). The complainant called his daughter, but she did not give any reply. Accordingly, on suspicion, the door of the house of the petitioner was knocked, but he did not open the door for a

sufficient long time. Thereafter, the complainant and his wife had gone back to their home. However, after about half an hour, the prosecutrix came back to their house. As per the prosecution, the prosecutrix was called by Khanak wife of the petitioner to her house, where she was subjected to rape by the petitioner.

Learned counsel for the petitioner has argued that the petitioner is in custody since 07.10.2018. The alleged incident had taken place on 04.10.2018, but the FIR was registered on 05.10.2018. He refers to the FSL report dated 23.10.2018 (Annexure P-1) and submits that human semen was detected on Ex.3 (underwear of the petitioner). However, semen was not detected on Ex.1 (vaginal swab) and Ex.P2 (Salwar) of the prosecutrix. In this manner, the factum of rape is not established.

He further refers to the statement of the prosecutrix as Pw4 to contend that she has stated that she had gone to the house of the petitioner, where she found his wife sleeping and the petitioner was awoken. The petitioner had committed wrong act with her and when she raised a voice, the petitioner got her dressed up and allowed her to go back to her house. He has argued that once the wife of the petitioner was present in the same house, the rape cannot be committed in her presence, even if she was sleeping. Thus, when the medical report is not supporting the case of the prosecution, the petitioner is entitled to be admitted on bail.

Learned State counsel states that no doubt, the petitioner is in custody since 07.10.2018, but the trial is at quite advance stage of conclusion as 11 witnesses have already been examined as against total 16 witnesses

cited by the prosecution. The prosecutrix in the case in hand is a minor girl. Therefore, the petitioner is not entitled to be admitted on bail.

I have heard learned counsel for the parties.

The prosecutrix has been examined as PW4, wherein she has reiterated that she had been called by the wife of the petitioner and when she had gone to the house of the petitioner, the wife of the petitioner was sleeping, where the petitioner had committed rape upon her.

Once the wife of the petitioner was present in the house, the allegation of commission of rape is required to be established only during the trial, but taking into consideration the FSL report attached with this petition as Annexure P-1, wherein human semen was detected on Ex.3 (underwear of the petitioner), but no semen was detected on Ex.1 (vaginal swab) and Ex.P2 (Salwar) of the prosecutrix, this Court finds that the culpability of the petitioner is yet to be established during the trial and no useful purpose would be served by keeping him in custody.

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.

December 12, 2019
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned:	Yes
Whether Reportable:	No