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

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Decided on:- January 27, 2020.

DEEPAK

.....Petitioner.

Versus

STATE OF HARYANA

.....Respondent.

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

Present:- Ms. Rosi, Advocate
for the petitioner.

Ms. Gaganpreet Kaur, AAG, Haryana.

HARI PAL VERMA, J. (Oral)

Petitioner-Deepak son of Khem Singh has filed the present second petition under Section 439 Cr.P.C. for grant of regular bail in case FIR No.123 dated 21.11.2018 registered under Sections 365, 376, 506, 120-B of IPC and Section 4 of Protection of Children from Sexual Offences Act, 2012 at Women Police Station, Palwal, District Palwal.

Learned counsel for the petitioner states that earlier petition i.e., **CRM-M-24747-2019** titled as “**Deepak Vs. State of Haryana**” was dismissed by this Hon'ble Court vide order dated 05.07.2019 as on that day the FSL report was not available. She further states that now the FSL report has been received which does not support the case of the prosecution as semen could not be detected on the exhibit detailed in the report on the articles of the prosecutrix. She has argued that the FIR was registered at the

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behest of the prosecutrix for the alleged incident dated 05.11.2018 whereas there is no such statement as regard the incident which allegedly took place on 20.11.2018.

Learned counsel for the petitioner further refer to the statement of the prosecutrix dated 09.12.2019 wherein in cross-examination she has stated that she does not know the petitioner-accused.

Learned counsel for the petitioner argues that the petitioner is in custody since 22.11.2018 and once the prosecutrix has already been examined, the petitioner deserves to be admitted on bail.

Learned State counsel does not dispute the custody period. However she states that there are allegations against the petitioner that he tried to commit the sexual assault on the prosecutrix.

I have heard learned counsel for the parties.

The FSL report dated 17.12.2019 received in the case is under;

“ Laboratory examination was carried out to detect the presence of semen on the exhibits performing chemical test and microscopy. Based upon these examinations, the results obtained are given below:-

1. Human semen was detected on exhibit-5 (Underwear). However, semen could not be detected on exhibit-1 (Leggings), exhibit-2a(Slides), exhibit-2b (Vaginal Swab), exhibit-3a (Slides), exhibit-3b (Vaginal Swab), exhibit-4a (Slides) and exhibit-4b (Cervical Swab).

Note:-1. After examination, the exhibit(s) with its/their original wrapper (s) has/have been sealed with the seal of RM.BHONDSI, GURGAON.

2. The result relates only to the items tested above.”

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Considering the fact that the FSL report does not support the case of the prosecution and the petitioner is in custody since 22.11.2018, this Court finds that the culpability of the petitioner is yet to be established during the trial and he 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.

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.

January 27, 2020
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(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No