

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

Criminal Misc. No.M-2881 of 2020 (O&M)

Date of Decision: 11.09.2020

Mahesh Kumar

...Petitioner (s)

Versus

State of Haryana

...Respondent(s)

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

Present:- Mr. Sandeep Kumar Yadav, Advocate for
Dr. Anand Kumar Bishnoi, Advocate
for the petitioner.

Ms. Gaganpreet Kaur, AAG, Haryana.

HARI PAL VERMA, J. (Oral)

The matter has been taken up for hearing through video conferencing due to outbreak of COVID-19.

CRM-17183-2020:

The application is allowed, as prayed. Statements of the prosecutrix (PW-6) and her father (PW-7) are taken on record as Annexures P-6 and P-7.

Criminal Misc. No.M-2881 of 2020:

The petitioner has filed the present petition under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail in FIR No.444 dated 18.10.2019 under Sections 368, 372 and 373 IPC,

Sections 6/17 POCSO Act and Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 registered at Police Station City Rewari, District Rewari.

Learned counsel for the petitioner has referred to the FIR as well as the statement of the prosecutrix recorded under Section 164 CrPC and submits that in the FIR, the prosecutrix has levelled the allegation of commission of rape upon her by the petitioner, but on the same very day i.e. 18.10.2019, in her statement under Section 164 CrPC, she has specifically stated that she was living in the room of the petitioner with her own consent and the petitioner has not committed rape upon her. He has argued that the prosecutrix has been examined in the case as PW-2 and she has not supported the case of the prosecution and therefore, she has been declared hostile. Similarly, father of the prosecutrix, who has been examined as PW-3, has also not supported the case of the prosecution and has been declared hostile. Even the DNA report does not establish the commission of the offence, as alleged. The petitioner is in custody since 19.10.2019.

Learned State counsel does not dispute the custody of the petitioner as well as the fact that the prosecutrix and her father have turned hostile and the DNA report also does not establish commission of rape.

I have heard learned counsel for the parties.

Admittedly, the prosecutrix has been examined in the case. Neither the prosecutrix nor her father has supported the case of the prosecution and they have declared hostile. In her statement under Section 164 CrPC, which was recorded on the same date of registration of FIR, the

prosecutrix has specifically stated that the petitioner has not committed rape upon her. Considering the fact that petitioner is in custody since 19.10.2019 and due to Covid-19, trial in the case will take sufficient long time, this Court deems it appropriate to release the petitioner on regular bail.

Accordingly, the present petition is allowed and the petitioner is admitted on regular bail, subject to furnishing of his bail bonds/surety bonds to the satisfaction of trial Court/Duty Magistrate.

September 11, 2020
AK

(HARI PAL VERMA)
JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No