

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

CRM-M-3887-2020

Date of Decision: 03.02.2020

VIPAN KUMAR

...Petitioner

Versus

STATE OF PUNJAB

...Respondent(s)

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

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

Ms. Ruchika Sabharwal, AAG, Punjab.

HARI PAL VERMA, J. (Oral)

Prayer in the present petition filed under Section 439 of the Code of Criminal Procedure, 1973 is for grant of regular bail to the petitioner in case FIR No.401 dated 04.09.2018 under Section 376 IPC and Section 4 of POSCO Act, 2012 registered at Police Station Focal Point, Ludhiana, District Ludhiana.

Learned counsel for the petitioner contends that the alleged incident had taken place on 03.05.2018 whereas the FIR was registered on 04.09.2018. The prosecutrix i.e., PW1 and her mother-PW2 have been examined in the case and they have not supported the case of the prosecution and are declared hostile. Petitioner is in custody since 05.09.2018.

The prosecutrix in the case was medically examined on 12.09.2018 i.e., after more than four months of the alleged incident.

Learned State counsel does not dispute the custody period however submits that the prosecutrix was subjected to medical examination on 12.09.2018 and as per the report dated 21.12.2018 spermatozoa was detected in the contents of Exhibit-1 (Three vaginal swabs). In this manner report is positive and has opposed the bail of the petitioner.

Heard learned counsel for the parties.

The petitioner is in custody since 05.09.2018. The alleged incident had taken place on 03.05.2018 and the FIR was registered on 04.09.2018. There is a delay in lodging the FIR. In the report of the chemical examination dated 21.12.2018, spermatozoa was detected in the contents of Exhibit-1 but she being subjected to medical examination after more than 04 months, this Court finds that the culpability of the petitioner is yet to be established during the trial thus 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.

03.02.2020
tarun

(HARI PAL VERMA)
JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No