

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

209

CRM-M-5340-2020

Date of Decision:30.07.2020

Sakir

.....Petitioner

Versus

State of Haryana

.....Respondent

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

Present: Mr. Munfaid Khan, Advocate,
for the petitioner.

Mr. Gagandeep Singh Chhina, AAG, Haryana

HARI PAL VERMA, J.(Oral)

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

Prayer in this petition filed under Section 439 Cr.P.C. is for grant of regular bail to the petitioner in FIR No.234 dated 17.10.2018 under Sections 376, 452, 506, 120-B IPC, 1860 and Section 4 of the POCSO Act, 2012, registered at Police Station Rozka Meo, District Nuh.

The present case has been registered on a complaint made by the prosecutrix with the allegation that on 16.10.2018 at about 3.00 PM, she had gone to her old house for cleaning. She was accompanied by her cousin Zilsana aged about 03 years. As she was about to enter the house, petitioner-Sakir and co-accused Salman son of Aamin who were sitting outside the house, caught hold of her on her entering there. Whereas

Salman gagged her mouth, the petitioner broke down the string of salwar of

the prosecutrix and raped her. The child who was with the prosecutrix witnessed the occurrence and shouted for help, which attracted her brother Mubarik to the spot. On seeing Mubarik, petitioner fled away from the scene while extending threat to the prosecutrix to kill her on finding another appropriate opportunity.

Learned counsel for the petitioner has argued that the petitioner is in custody since 17.10.2018. The prosecutrix was subjected to medical examination in order to detect the presence of semen on the exhibits and based upon these examination, the results were obtained, wherein it was found that semen could not be detected on Exhibit-1(salwar), Exhibit-2 (vaginal swabs) and Exhibit-3(slides). He further states that despite having been granted numerous opportunities, the prosecutrix is not coming forward to depose in the case. He refers to zimni orders 29.08.2019, 07.11 2019, 19.12.2019 and 24.06.2020 and submits that vide order dated 07.11.2019, the victim was summoned through non-bailable warrants for 19.12.2019 and vide order dated 19.12.2019, the victim was summoned for 26.03.2020. Due to COVID-19 pandemic even in the near future, there is remote possibility of the prosecutrix being examined in the case.

Learned State Counsel does not dispute the custody period. However, he has argued that the victim in the case is a minor girl. Even if semen was not detected on the Exhibit-1(salwar), Exhibit-2(vaginal swabs) and Exhibit-3(slides), is not sufficient to admit the petitioner on bail.

Heard learned counsel for the parties.

Petitioner is in custody since 17.10.2018. Number of opportunities have been granted to the prosecutrix to depose in the case, but she has not appeared to depose. The trial court was constrained to issue

non-bailable warrants against her. The medical report where the prosecutrix was subjected to medical examination has found that semen was not detected on Exhibit-1(salwar), Exhibit-2(vaginal swabs) and Exhibit-3 (slides). Trial in the case is not likely to be concluded in the near future. In this manner, this Court finds that the petitioner deserves to be admitted on bail.

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

However, it is made clear that the observations made hereinabove shall not be construed as an expression on the merits of the case and the trial Court shall proceed with the trial independently without being influenced by the order of bail passed by this Court.

July 30, 2020
seema

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No