

229.

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

CRM-M-6667-2020

Date of decision: 03.03.2020

RAJ KUMAR @ RAJESH @ RAJU

... Petitioner

versus

STATE OF HARYANA

.... Respondent

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Lalit Singla, Advocate,
for the petitioner.

Ms. Gaganpreet Kaur, AAG, Haryana.

HARI PAL VERMA, J.(Oral)

Prayer in the present petition filed under Section 439 Cr.P.C. is for grant of regular bail to the petitioner in case FIR No.160 dated 22.04.2019 registered under Sections 328/363/366-A of IPC, Section 4 of POCSO Act, 2012 (Section 3 of SC & ST Act, 1989 and Section 376(3) of IPC added lateron) at Police Station KUK, District Kurukshetra.

The aforesaid FIR was registered on the statement of the complainant, who is mother of the victim, had made allegations against the co-accused Ram Mehar @ Nannu. As per the FIR, on 19.04.2019 at about 10 AM, the daughter of the complainant left home without informing anyone in the house. Thereafter search was made. However, on 20.04.2019 at about 5-5:30 PM, some relatives of the complainant brought her back and she was asked the reason for leaving the house. In reply thereof, the prosecutrix has replied that one person namely Nannu (co-accused), resident of Ghanouri

took her from the house while giving promise of marriage and kept her in his room for the entire night and had raped her without her consent while adding intoxicating material in the cold drink. Thereafter in the evening ASI Sharmila took the prosecutrix to the police post Jyotisar and the complainant was forced to compromise the matter with the accused.

Learned counsel for the petitioner has argued that a bare perusal of the FIR would show that there is no allegation against the petitioner. It is only in the statement of the prosecutrix made under Section 164 Cr.P.C. and in her supplementary statement, she has made allegations against the petitioner. On the basis of affidavit so furnished by the complainant, the co-accused Nannu was declared innocent and it is only on the basis of an application moved by the petitioner, the co-accused Nannu, was summoned to face trial in the case. Petitioner is in custody since 12.08.2019. Since the co-accused was summoned by the trial Court to face trial, he had approached this Court by way of **CRM-M-7227-2020** titled as ***Ram Mehar @ Nannu Versus State of Haryana*** challenging his summoning.

Learned State counsel does not dispute the custody. However, she submits that the initial version was reported at the behest of the mother of the prosecutrix being the complainant. When the prosecutrix was examined under Section 164 Cr.P.C., she has made specific allegation against the petitioner. The prosecutrix, being minor, the petitioner is not entitled to be admitted on bail, more particularly when the prosecutrix has not been examined in the case.

I have heard learned counsel for the parties.

Petitioner is in custody since 12.08.2019. In the initial version which was reported at the behest of the complainant who is none else but the mother of the prosecutrix, she had made no allegation against the petitioner. It is only thereafter when the statement of the prosecutrix under Section 164 Cr.P.C. was recorded, she has named the petitioner along with the co-accused Ram Mehar @ Nannu. As on date, there is no evidence that the petitioner has committed rape upon the prosecutrix as even FSL report in the case is yet to be received. Therefore, in the absence of FSL report and the fact that other co-accused has been admitted on bail, this Court deems it appropriate to admit the petitioner on bail.

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

It is made clear that the petitioner shall not extend any threat and shall not influence any prosecution witnesses in any manner directly or indirectly.

The observations made hereinabove shall not be construed as an expression on the merits of the case and the trial Court shall decide the case on the basis of available material.

(HARI PAL VERMA)
JUDGE

03.03.2020
sanjeev

Whether speaking/reasoned?	Yes/No
Whether reportable?	Yes/No