

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

CRM-M-7796 of 2020.

Decided on:- February 27, 2020.

Naseem.

.....Petitioner.

Versus

State of Haryana.

.....Respondent.

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

Present:- Mr. Sanjeev Kumar Bawa, Advocate
for the petitioner.

Ms. Gaganpreet Kaur, A.A.G., Haryana.

Mr. Mazlish Khan, Advocate
for the complainant.

HARI PAL VERMA, J. (Oral)

The petitioner has filed present petition under Section 439 Cr.P.C. for grant of regular bail in FIR No.52 dated 26.05.2017 (in final report date of FIR is mentioned as 25.05.2017) under Sections 376-D and 506 IPC as well as Section 6 of the Protection of Children from Sexual Offences Act, 2012 registered at Women Police Station Mewat, District Mewat.

The aforesaid FIR was registered at the behest of Rahit son of Abdul, who is father of the prosecutrix. As per the FIR, on 26.01.2017, when the prosecutrix had gone to the fields to fetch fodder, suddenly, Aamil son of Mubeen, Sakul son of Hameeda and Naseem son of Abdulla (petitioner herein) came inside their fields and nabbed the prosecutrix. Aamil and Sakul forcibly raped her and threatened that they have made a video clip of the

incident and if she discloses the incident to anybody, they will make the video public. Thereafter, all the accused had physically exploited and threatened the prosecutrix on the pretext of video clip. The accused persons frequently used to call the prosecutrix on mobile No.8684860919 from their phone numbers 9991821788, 9050226722, 9050743238 and 9991270013. The family members of the accused were informed about the act of the accused. On 03.05.2017, the complainant along with his wife had gone to his in-laws' house for some work. On 04.05.2017 at about 12.00 P.M. in the afternoon, when the prosecutrix was alone at home, then Kadir son of Mubeen entered their house and tried to commit rape upon her forcibly and stated that Aamil son of Mubeen, Sakul son of Hameed and Naseem son of Abdulla had raped her and he would also rape her and if she stopped him from doing so, he will show the video film to the whole village. Thus, the prosecutrix and her parents would not be able to face anyone in the village. In the meanwhile, the complainant reached the spot, and on seeing him, accused Kadir son of Mubeen ran away from the spot and the prosecutrix narrated the whole incident to the complainant. Thereafter, talks of compromise were going in the village and, therefore, the complainant had not taken any legal action against the accused, but due to not reaching at any compromise in the community, now he wants to initiate legal action against the accused persons.

Learned counsel for the petitioner has submitted that the alleged incident had taken place on 26.01.2017, whereas the present FIR was registered on 26.05.2017 i.e. after a delay of about 5 months. There is no such medical report available on record so as to establish the fact that even on 04.05.2017, the prosecutrix was subjected to rape. The prosecutrix is a

married girl and the complainant despite being father of the prosecutrix had intentionally not disclosed this fact so as to sensitise the issue.

He has further contended that the petitioner is otherwise in custody since 25.09.2019. Even for the alleged second incident, which took place on 04.05.2017, the present FIR was registered on 26.05.2017. There is a civil litigation pending between the petitioner and the real uncle of the prosecutrix and it is in this background, the petitioner has falsely been implicated in the present case.

Learned counsel for the complainant has argued that it is under the garb of the video clip, the petitioner and other co-accused have been committing rape upon the prosecutrix, a minor girl. It is wrong that the present FIR has been registered after a delay of more than 20 days. In fact, after 5 days of the incident, the matter was reported to the District Legal Services Committee and it is thereafter, the present FIR was registered. However, the incident dated 26.01.2017 could not be reported promptly as it was not disclosed by the prosecutrix to her parents. In the absence of examination of the prosecutrix before the trial Court, the petitioner is not entitled to be released on bail.

He has further argued that there was a faulty investigation being conducted by the police and it is for this reason, the complainant had approached this Court seeking fair investigation in the case.

Learned State counsel submits that there are serious allegations levelled against the petitioner, as the victim in the case is a minor girl and her date of birth is 10.01.2002.

I have heard learned counsel for the parties.

The petitioner is in custody since 25.09.2019. It is the case of the prosecution that the first incident had taken place on 26.01.2017 and the matter was never reported to the police. It is for the subsequent alleged incident dated 04.05.2017, the present FIR was registered on 26.05.2017. The argument of learned counsel for the complainant that the complainant had approached this Court as there was faulty investigation being conducted by the police, cannot be accepted particularly when there is no medical report so as to support the case of the prosecution that the prosecutrix was subjected to rape. The FSL report dated 18.01.2018 (Annexure P-7) attached with this petition nowhere suggests the commission of rape. As per the laboratory examination, semen could not be detected on exhibit-1a (Salwar), exhibit-1b (Shirt) and exhibit-2 (Cervical and Vaginal Swabs). In this manner, the culpability of the petitioner is yet to be established during the trial.

Moreover, the prosecutrix in the case is a married girl and this fact has not been disclosed by the complainant at the time when the FIR was registered which creates a serious doubt on the veracity of the statement of complainant. Therefore, in the background of the case when a civil litigation is pending between the parties and the matter was reported to the police after an inordinate delay, this Court finds that the petitioner 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.

February 27, 2020
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned:Yes

Whether Reportable:No