

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

**CRM-M-15767-2020 (O&M)
Date of Decision: 20.07.2020.**

Kavita

....Petitioner.

Versus

Union Territory, Chandigarh

....Respondent.

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Shubham Goel, Advocate for the petitioner.

Mr. Manish Jain, APP, U.T., Chandigarh.

Suvir Sehgal, J.

The Court has been convened through video conferencing due to Covid-19 pandemic.

CRM-15793-2020

Prayer made in the application is for placing on record the judgments of Hon'ble Supreme Court in compliance of order dated 03.07.2020.

Application is allowed. The judgments are taken on record.

CRM-M-15757-2020

Present petition has been filed by petitioner-Kavita wife of Amit, under Section 439 Cr.P.C. for grant of regular bail in case FIR No.70 dated 02.06.2019, under Sections 376-D, 376, 376(2) and 120-B IPC, and Sections 4 and 5 of Protection of Children from Sexual Offences Act, 2012, registered at Police Station Sarangpur, Union Territory, Chandigarh.

The petitioner is the elder sister of the prosecutrix-victim, who is a girl of 16 years of age. The allegation against the petitioner is that she along with her husband, Amit, took the prosecutrix to a hotel in Burail, where they left her in the company of four boys from Hisar, who raped her. The next morning, the petitioner along with her husband Amit, and husband's friend Parveen, came back to the hotel where Amit forced himself upon the victim. They took the victim to a house in Ram Darbar. Later when she was being taken on a scooter by the wife of Parveen, victim's brother spotted and rescued her. He took her with him to his house, where she narrated the incident to her other sister Komal, who brought her to the Police Station. The FIR was registered on 02.06.2019 and the petitioner was arrested on 06.06.2019.

Counsel for the petitioner has contended that the allegations against the petitioner are fabricated and an after thought inasmuch as the petitioner was named by the victim in the supplementary statement (Annexure P2). Relying upon the judgments of the Hon'ble Supreme Court in Criminal Appeal No.847 of 2009, **State of Rajasthan Vs. Hemraj and another, decided on 27.04.2009** and in Appeal (Criminal) No.754 of 2006 **Priya Patel Vs. State of M.P. and another, decided on 12.07.2006**, counsel for the petitioner has argued that the petitioner, who is a lady cannot be held guilty for rape as this is conceptually inconceivable.

Opposing the prayer for bail, Mr. Manish Jain, APP, U.T., Chandigarh, upon instructions from Inspector Iqbal Singh, has submitted that the petitioner being an elder sibling was in a position to influence the victim. The victim has specifically named the petitioner as being responsible for taking her to a hotel where she was sexually exploited.

I have considered the rival submissions of the parties.

The prosecutrix is a young girl of 16 years of age, who was staying with the petitioner. She can have no possible reason for framing her elder sister nor any such reason has been given by the petitioner. Even though the victim did not name the petitioner in her complaint before the police, in the supplementary statement she has not only named the petitioner but attributed a specific role to her in the traumatic incident. The victim is a young and innocent girl, who cannot possibly have an ulterior motive, her statement cannot be discredited as false.

Besides Section 376 IPC, the FIR has also been registered against the petitioner under Sections 4 and 5 of Protection of Children from Sexual Offences Act, 2012. Therefore, the judgments of Hon'ble Supreme Court do not help the petitioner. The trial is at an initial stage. The statement of the prosecutrix-victim is yet to be recorded in Court. The petitioner is a blood relation of the victim and in a fiduciary position of influencing her. The grant of bail pending trial to the petitioner at this stage is not warranted.

Keeping in view the gravity of the offence and the fact that the victim is a minor girl and younger sibling of the petitioner, the petitioner is not entitled to concession of regular bail.

Accordingly, the present petition stands dismissed.

It is clarified that any observation made hereinabove shall not be construed as an expression on the merits of the case.

(SUVIR SEHGAL)
JUDGE

20.07.2020
komal

Whether speaking/ reasoned : Yes/ No
Whether Reportable : Yes/ No