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

**CRM-M No.21396 of 2020
Date of Decision: 22.12.2020**

Jagroop Singh @ Roopi

.....Petitioner

Vs

State of Punjab

.....Respondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Sunil Chadha, Sr. Advocate with
Mr. Akshay Chadha, Advocate
for the petitioner.

Mr. Sarabjit Singh, Asstt. A.G., Punjab.

RAJ MOHAN SINGH, J.

[1]. The case was taken up for hearing through video conferencing.

[2]. Petitioner seeks grant of regular bail under Section 439 Cr.P.C in case bearing FIR No.17 dated 10.02.2019, registered under Sections 376-D, 342, 384, 354-B, 379-B, 364-A and 397 IPC in which charges have been framed under Sections 341, 427, 364-A, 342, 323, 354, 354 read with Sections 34, 354-B, 354-B read with Sections 34, 376-D, 397 and 411 IPC, Section 66-B read with Section 34 IPC and Section 66-E of the Information Technology Act at Police Station Dakha, District

Ludhiana.

[3]. The FIR was registered at the instance of the complainant/prosecutrix with the allegations that on 09.02.2019 at about 8.00 P.M., she along with her friend Prabhnoor had come towards the Issewal side, Ludhiana in a car. They had reached a little ahead of Issewal Canal bridge towards the side of Changna Wale. Three young boys came from behind on a motorcycle out of whom one was Sikh and two were clean shaven. One hit the window pane of the car with brick. Sikh boy and one clean shaven boy caught hold of the steering of the car and by making a mobile call they called seven more persons on two motorcycles. Both dragged Prabhnoor and took him to the back seat of the car. Sikh boy made the complainant forcibly sit on his lap and all of them took the complainant and Prabhnoor alongwith the car to a plot. Prabhnoor was confined in the car. The complainant was dragged from the car and was taken to the plot, where 10 persons committed gang rape with her one by one. For letting them go, the accused persons demanded an amount of Rs.1 lakh as extortion amount. When nobody came with the money, then they left the complainant and Pranhnoor and fled away in their vehicles by throwing the keys of the car. The complainant and Prabhnoor reached Pandita Da Dhaba, Mullanpur in their car, where they met Jaspreet Singh friend of

Prabhnoor. Along with him one more friend namely Paramjit Singh was also there. The whole story was disclosed to them. Thereafter they went home. Prabhnoor had suffered injuries, therefore, Jaspreet Singh and Hardeep Singh took the complainant and Pranhnoor to Civil Hospital, Sudhar. Since there was no lady Doctor in the Civil Hospital, Sudhar, medical of the complainant was not done and the Doctor asked her to come in the morning. The FIR was registered with this background.

[4]. Learned Senior counsel for the petitioner submitted that Prabhnoor himself made a complaint No.163-UID PS Dakha on 10.09.2019 to the Station House Officer, Police Station Dakha with the following allegations:-

"It is submitted that I, Prabhnoor Singh Kaura S/o Ravinder Singh, am resident of Dashmesh Nagar, Street No.14, House No.2513/2, Ludhiana. Yesterday, on 9/2/19, at about 9.30 PM, I was going towards Aero City in my car I-20 No.PB-10-FS-7555. When I was about to take turn from Issewal then on two motorcycles, 5 persons came and they threw a brick on my car and I got perplexed and two persons caught hold of steering of my car and thereafter four more persons came there, who took me and my car inside a boundary walled area and gave me beating and

started demanding an amount of Rs.one Lakh from me and till 1.30 PM these persons kept me confined and thereafter, under the fear of police coming there, they fled away from there leaving me. They took away an amount of Rs.11,000/- of mine. I have come to inform you. Action be taken.”

[5]. Learned Senior counsel further submitted that perusal of the aforesaid complaint does not show any such allegations vis-a-vis. the gang rape committed by 10 persons upon the prosecutrix. The aforesaid written complaint was the first statement made by Prabhnoor. This statement has been proved in the statement of Prabhnoor while appearing as PW-9 as Ex.DD. The said statement does not commensurate with the allegations in the FIR lodged by the prosecutrix or her statement recorded under Section 164 Cr.P.C. No incident of the prosecutrix accompanying Prabhnoor in respect of gang rap was ever brought to the notice of the Police.

[6]. Learned Senior counsel further submitted that it would be unbelievable that after the alleged major incident having been taken place, the prosecutrix would go quietly back home and would decide to get herself medically checked rather to approach the Police Station for registration of FIR. The statement was made by the prosecutrix after about 26 hours of

the alleged incident.

[7]. Learned Senior counsel further submitted that as per DNA report, no traces of semen of the petitioner were found on the vaginal swabs of the prosecutrix, rather the same were allegedly found on the shirt of the prosecutrix. As per pleaded case of prosecutrix, her clothes were removed before commission of the alleged gang rape. In view of the alleged prosecution version itself, the presence of semen of the petitioner on the shirt of prosecutrix would be highly debatable and imaginary.

[8]. Dr. Neelam Bhatia, Medical Officer, Civil Hospital, Sudhar, has examined the prosecutrix on 11.02.2019. The Doctor has appeared as PW-2 and stated that as per her observation the prosecutrix was habitual of sexual intercourse as disclosed by her and there was no injury inside and outside the vagina of the prosecutrix. The Doctor further admitted that if the victim is subjected to forcible sexual intercourse by 10-12 persons in one go, then injuries on her private part are bound to occur.

[9]. Learned Senior counsel further submitted that the petitioner has been nominated on the basis of disclosure statement of Sadik Ali. Two of the accused, who were called during the alleged incident namely Gurjeet and Jasbir were

ultimately identified as Sadik Ali and petitioner respectively. The prosecution story is shrouded with mystery as to why Jaspreet Singh friend of Prabhnoor Singh would be called for ransom and thereafter without receiving any ransom amount, why the accused would leave the alleged place of occurrence particularly when there was no evidence that Jaspreet Singh had informed the Police at any point of time. The sexual relationship of the prosecutrix with Prabhnoor is an admitted fact on record.

[10]. Learned Senior counsel further submitted that the alleged identification of the petitioner is also on the questionable note as the prosecution case itself is based on the fact that three accused out of six accused namely Sadik Ali, petitioner and Surma had already been shown to Prabhnoor Singh on 16.02.2019 in the office of M.C. Mullanpur. Thereafter the alleged identification of the aforesaid three accused including the petitioner on 22.02.2019 by the prosecutrix and Prabhnoor Singh would become totally meaningless particularly when the sketches of the six accused persons allegedly got prepared on 11.02.2019 and 12.02.2019 from Rajnish Sehgal (PW-16) finds the names of these three persons. Evidently, no family member of the prosecutrix accompanied her during the medical examination either on the night of 10.02.2019 and thereafter.

Sadik Ali has been arrested on the basis of secret information on 12.02.2019 and on the basis of his disclosure statement, the petitioner has been nominated.

[11]. By referring to the aforesaid facts, learned Senior counsel further submitted that the arrest of the petitioner on the basis of disclosure statement of co-accused Sadik Ali is illegal. It has already come on record in the statement of one of the prosecution witness that petitioner, co-accused namely Sadik Ali and Surma were got identified on 16.02.2019 in the office of Municipal Committee, Mullanpur and the said evidence is inadmissible in the eyes of law in view of Section 162 Cr.P.C. The alleged identification by the prosecutrix on 22.02.2019 is also inadmissible for want of compliance in terms of Section 54, Chapter II, Part-C of Volume III of the High Court Rules and Orders.

[12]. Learned Senior counsel further submitted that sketches of only six persons were got prepared, leaving the remaining four co-accused. The alleged voice sample of the petitioner is also inadmissible piece of evidence. The alleged recovery of silver chain and locket belonging to Prabhnoor, if tested in the light of statement of Prabhnoor (Ex.DD) then it would come out to be a farce. Prabhnoor never complained of any such articles having been taken away by the accused, nor there was any

allegation in the FIR or in the statement of the prosecutrix under Section 164 Cr.P.C. The alleged allegation of clicking of nude photographs of the prosecutrix is not against the petitioner, rather the same is against the co-accused Ajay @ Brij Nandan. Statement of the prosecutrix under Section 164 Cr.P.C. was recorded after four days of occurrence i.e. on 14.02.2019 and in the statement, prosecutrix has signed by mentioning the date as 12.02.2019 under her signature.

[13]. Learned Senior counsel further submitted that the bail has been declined on the ground that the petitioner was identified in test identification parade and his DNA profile duly matched besides matching call details of the same place. Petitioner applied for bail before the Addl. Sessions Judge only after examination of material witnesses. The statement of the prosecutrix was recorded only after being told by the Police that her statement was to be recorded before the Magistrate. As per conclusion of the DNA report, B-2 was the shirt of victim on which Sadik Ali and Jagroop Singh were the contributors of the human semen. This piece of evidence would remain debatable in view of the prosecution story that before committing the alleged crime clothes of the prosecutrix were removed.

[14]. Learned Senior counsel further submitted that the statement of DSP as PW-25 has been recorded wherein the

factum of statement of Prabhnoor bearing UID No.163 dated 10.09.2019 (Ex.DD) has been admitted. The said witness has elaborated many details. According to learned Senior counsel the same would go in favour of the petitioner. Petitioner is in custody since 12.02.2019. Out of 54 prosecution witnesses, only 25 witnesses have been examined and three prosecution witnesses have been given up. All the material witnesses have been examined. Trial of the case may take long time to conclude.

[15]. Per contra, learned State counsel however opposed the prayer for the grant of regular bail on the ground that the petitioner is one of the accused against whom allegations are of gang rape.

[16]. Having heard learned counsel for the parties, I am of the view that the *prima facie* consideration of material on record would make the petitioner entitled for regular bail, who is in custody since 12.02.2019. The material collected by the prosecution would remain debatable.

[17]. At this stage, without commenting anything on the merits of the case, I deem it appropriate to consider the custody of the petitioner since 12.02.2019 and *prima facie* consideration of material on record to be sufficient for granting regular bail to the petitioner. Petitioner is ordered to be released on bail,

subject to his furnishing adequate bail bonds/surety bonds to the satisfaction of the trial Court/concerned Duty Magistrate. Petition stands allowed.

[18]. Nothing expressed hereinabove would be construed to be an expression of any opinion on merits of the case.

December 22, 2020
Atik

(RAJ MOHAN SINGH)
JUDGE

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