

210.

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

CRM-M-21301-2020

Date of decision: 23.09.2020

SANJEEV @ MAMAN

... Petitioner

versus

STATE OF HARYANA

.... Respondent

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Jasbir Mor, Advocate,
for the petitioner.

Ms. Gaganpreet Kaur, 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 the present petition filed under Section 439 Cr.P.C. is for grant of regular bail to the petitioner in case FIR No.167 dated 13.04.2019 registered under Sections 376, 450, 506 and 201 IPC at Police Station Safidon, District Jind.

Counsel for the petitioner has argued that the FIR version as well as the statement of the prosecutrix recorded under Section 164 Cr.P.C. is at variance, whereas in the FIR, the prosecutrix has alleged that on the relevant date i.e. 12.04.2019 at about 10/11 PM, the petitioner firstly disconnected the electricity of the house, leading darkness in the house and taking advantage of this darkness, he trespassed in the house while scaling the wall. At that time, her husband was sleeping and the petitioner gagged

her mouth and by keeping sword on her neck, forcibly took her to the terrace of his shop where he committed rape upon her. Whereas in her statement under Section 164 Cr.P.C., she has stated that taking advantage of the darkness, the petitioner has put cloth on her mouth and committed rape upon her. He was having *talwar* in his hand and the prosecutrix became unconscious. However, when she regained consciousness, she found herself in her room.

Counsel for the petitioner has referred to the photographs attached with the petition to contend that the relations between the petitioner and the prosecutrix were consensual. Petitioner is in custody since 15.04.2019. Trial in the case is not likely to be concluded in the near future as due to Covid-19 epidemic, courts are not functioning regularly.

Learned State counsel has submitted that the prosecutrix was subjected to medical examination which established sexual intercourse by the petitioner with the prosecutrix. Semen was detected and DNA matches with the petitioner. Therefore, the petitioner is not entitled to be admitted on bail.

I have heard learned counsel for the parties.

Petitioner is in custody since 15.04.2019. The allegations against the petitioner are that the petitioner entered the house of the prosecutrix after disconnecting the electricity and after scaling the wall while her husband was sleeping, the petitioner gagged the mouth of the prosecutrix and by keeping sword on her neck, forcibly took her to the terrace of his shop where rape was committed, whereas in her statement under Section 164 Cr.P.C., she has stated that the petitioner has put cloth on

her mouth and committed rape. Thus, in her statement under Section 164 Cr.P.C., she has not stated that she was taken to the terrace, but in the FIR, she has not made any allegation that in what manner she was intoxicated. The photographs attached with the petition does reflect the closeness of the prosecutrix with the petitioner. It is only during trial it would be established that as to whether the petitioner has committed rape upon the prosecutrix or physical relations between them were consensual. Moreover, trial in the case will take sufficient long time as due to Covid-19 epidemic, courts are not working regularly. Thus, 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.

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

23.09.2020
sanjeev

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