

CRM-M-22196-2020

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(PROCEEDINGS THROUGH V.C.)

CRM-M-22196-2020

Date of Decision: August 14th, 2020

Ajay

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present Mr. Daljeet Singh Virk, Advocate
for the petitioner.

Ms. Tanisha Peshawaria, DAG, Haryana.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Petitioner has approached this Court for grant of regular bail by filing this petition under Section 439 of the Code of Criminal Procedure, 1973, in FIR No.51, dated 05.02.2020, registered at Police Station Rania District Sirsa, under Sections 363, 366-A, 376 of the Indian Penal Code and Section 4 of the POCSO Act.

It is the contention of the learned counsel for the petitioner that the petitioner has been falsely implicated in the present case as the true picture emerged at the time when the statement of the prosecutrix under Section 164 of the Code of Criminal Procedure was recorded before the ACJM, Ellanabad, wherein she had clearly mentioned about the fact that she had gone along with the petitioner at her own will and nobody had taken her forcibly. No allegation whatsoever or an indication come from there

indicating sexual assault on her. Even during the medico legal examination on 08.02.2020, she had refused to either give her previous history or consent for the medical examination, rather she stated in the presence of her mother and the police officials who accompanied her for medical examination that no force has been applied upon her and she does not want her medical examination either internal or external to be conducted. It is, on the basis of a supplementary statement given by the prosecutrix on 11.02.2020 (Annexure P-4), a fresh examination was carried out and then only the petitioner has been roped in with various allegations attributing it to the sexual assault upon the petitioner. Counsel contends that the allegations against the petitioner are the misuse of the provisions of the statute and it is under the pressure of the family that the prosecutrix has now changed her stand altogether. Petitioner is in custody since 11.02.2020 and out of total 17 prosecution witnesses, none has been examined. Even in the FSL report, no sperm has been found. Prayer has, thus, been made for the grant of regular bail as the trial is not likely to conclude in near future.

Learned counsel for the State, on the other hand, contends that it is the other way round, as earlier the prosecutrix was under the pressure of the petitioner and therefore, had refused to get her medical examination conducted. After coming out of the pressure, the prosecutrix proceeded to get her medical examination when the truth came out. She, however, could not dispute the factual assertions made by the learned counsel for the petitioner.

I have considered the submissions made by the learned counsel

for the parties and gone through the available records.

Keeping in view the facts and circumstances of the present case especially in the light of the statement of the prosecution as recorded on 08.02.2020 (Annexure P-2) under Section 164 of the Code of Criminal Procedure followed by refusal of the medico legal examination by her on 08.02.2020, which is in the presence of the mother of the prosecutrix as well as Doctor (Annexure P-3), with the fact that the petitioner being in custody since 11.02.2020 and none out of the 17 prosecution witnesses having been examined as also the trial is not likely to conclude in near future because of the prevailing pandemic situation, this criminal miscellaneous petition is allowed. Petitioner is ordered to be released on bail subject to his furnishing bail and surety bonds to the satisfaction of the trial Court/Chief Judicial Magistrate/Duty Magistrate, Sirsa.

Any observation made herein-above shall have no bearing on the merits of the case during the trial in any manner.

August 14th, 2020
Harish

(AUGUSTINE GEORGE MASIH)
JUDGE

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