

CRM-M-22153-2020

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(PROCEEDINGS THROUGH V.C.)

CRM-M-22153-2020

Date of Decision: August 14th, 2020

Devender

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present Mr. P.K.S. Phoolka, 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.15, dated 13.03.2020, registered at Women Police Station Dabwali, District Sirsa, under Sections 323, 376 and 451 of the Indian Penal Code.

It is the contention of the learned counsel for the petitioner that the FIR is a concocted story especially in the light of the fact that on 02.02.2020, a calandra under Section 107/151 of the Code of Criminal Procedure was registered at Police Station Dabwali, on the complaint of Baljeet Kaur wife of Gurdeep Singh, who is complainant in the present FIR as well. There was certain altercation and scuffle between the two families on the issue of parking etc. being neighbours. Reference in this regard

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has been made to Annexure P-2. Counsel contends that the present FIR is a result thereof, which has been given at the time when the calandra was registered. Assertion has also been made that as per the FIR itself, the prosecutrix was lying on the bed upstairs and her children were sitting in the rented house downstairs. Had such an incident taken place, where the petitioner would have entered the house of the complainant and committed forcible rape on her, there would have been struggle on the part of the prosecutrix. No hue and cry was raised by her. Delay of nine hours in the registration of the FIR has also been pointed out by the learned counsel for the petitioner. It is contended that even as per the medico legal report, there being no injury on any part of the body of the prosecutrix, the allegations have not been substantiated. Petitioner is in custody since 13.03.2020 with the challan having been presented and out of total 12 prosecution witnesses, none has been examined and therefore, the trial is not likely to proceed in the prevailing circumstances. He, thus, prays that the concession of bail be granted to the petitioner.

Learned counsel for the State, on the other hand, could not dispute the factual aspects as have been pointed out by the learned counsel for the petitioner, however, she contends that there is a FSL report, which indicates the presence of human semen. This would substantiate the allegation of the prosecutrix with regard to the sexual act having been committed upon the prosecutrix. She, therefore, opposes the prayer made by the petitioner.

I have considered the submissions made by the learned counsel

for the parties and with their assistance have gone through the available records.

Keeping in view the fact that the petitioner is in custody since 13.03.2020 with no witness having been examined despite the challan presented before the Court and the trial is not likely to proceed in near future because of the prevailing pandemic apart from the aspect that there is a delay of nine hours in the registration of the FIR as also the fact that the children being at the ground floor, with no struggle mark, the assertion of the counsel for the petitioner could be somewhat correct. It is not in dispute that the complainant is a married woman and therefore, possibility of semen being there also cannot be ruled out.

In view of the above, 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