

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

CRM-M-22445-2020

Date of decision:-8.10.2020

Avesh

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr.Rahul Jaswal, Advocate the petitioner.

Mr.Tanuj Sharma, AAG, Haryana.

H.S. MADAAN, J. (Oral)

Case taken up through video conferencing.

This second petition for regular bail, has been filed by petitioner Avesh, aged about 23 years, an accused in FIR No.97 dated 31.8.2018 for the offences under Sections 328, 452, 376-D IPC (offence under Section 201 IPC registered later on), registered with Women Police Station, Panipat.

The first petition filed by the petitioner bearing CRM-M-12708-2020 had been withdrawn on 3.6.2020, copy of the order being Annexure P-5.

Briefly stated, the prosecution story is that while the

prosecutrix along with her family members was sleeping in her house at village Rana Majra, District Panipat then Polla, Avesh (present petitioner) and Mashrulla of their village came there and made prosecutrix smell some intoxicant substance; thereafter taking her to another room, where they committed rape upon her and took snaps of the incident; the prosecutrix had become unconscious; when she regained consciousness, she disclosed the incident to her family members and police was informed in that regard. Formal FIR was registered. After completion of investigation, challan has been filed in the Court and trial against the accused is pending. The petitioner had approached the Court of Sessions at Panipat seeking regular bail by moving application but was unsuccessful inasmuch as the application was dismissed by learned Additional Sessions Judge, Panipat on 11.4.2020. Thereafter, the petitioner had earlier filed a petition before this Court referred supra, which was however withdrawn. Now the petitioner has again approached this Court by way of filing the present petition craving for the similar relief, which request is being opposed by the State counsel.

I have heard learned counsel for the parties besides going through the record.

Learned counsel for the petitioner has contended that when statement of prosecutrix was recorded under Section 164 Cr.P.C. before the Magistrate, she had not named any of the accused and rather had stated that three boys had come and closed her mouth; thereafter they started abusing her, asking her for the key; another room was locked and due to fear, she told that key was lying in the refrigerator; they opened the lock and took her to the room, removed her clothes and started

misbehaving with her and clicked her photos and made a video film and uploaded it on Whatsapp.

According to the learned counsel for the petitioner none of the accused including the present petitioner has been named in that statement and there are no allegations of rape. The co-accused of the petitioner, namely Fariyad @ Polla and Mashrulla have been granted concession of regular bail by this Court and the case of the petitioner is at par with such co-accused, therefore, he be also granted concession of regular bail.

Whereas, learned State counsel has contended that the petitioner had been declared a proclaimed offender and this is the distinction between him and that of co-accused and therefore regular bail may not be granted to him.

After hearing learned counsel for the parties and going through the record, I find that the petition deserves to be allowed, though considering the fact that petitioner had been declared a proclaimed offender, suitable terms and conditions shall be imposed to ensure that he does not abscond.

Therefore, the present petition is allowed. The petitioner is ordered to be released on bail on his furnishing bail bonds and surety bonds to the the trial Court/CJM/Duty Magistrate, Panipat, subject to the following conditions:-

- (i) he shall appear in the Court on each and every date of hearing;
- (ii) he shall not give any threat or intimidation to the prosecution witnesses; and
- (iii) he shall not leave India without prior permission of the Court and shall surrender his passport, if he has got one, otherwise to

furnish affidavit in that regard.

However, it is observed that the Magistrate accepting the bonds may ask the petitioner to furnish a local surety having documentary proof of immovable properties equivalent or more than the surety amount.

8.10.2020
Brij

(H.S. MADAAN)
JUDGE

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