

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

211

CRM-M-28933-2020

Date of Decision:06.10.2020

Shahrukh

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR.JUSTICE HARI PAL VERMA.

Present: Mr. Harinder Pal Singh Ishar, Advocate,
for the petitioner.

Ms. Gaganpreet Kaur, AAG, Haryana.

Mr. Viney Kumar Pandey, Advocate,
for the complainant.

HARI PAL VERMA, J.(Oral)

The matter has been taken up for hearing through video conferencing due to outbreak of COVID-19.

Prayer in this petition filed under Section 439 Cr.P.C. is for grant of regular bail to the petitioner in FIR No.53 dated 31.01.2020 under Sections 376, 363, 366-A, 212, 506, 376D IPC and Section 4 of the POCSO Act, 2012 (the offences under Sections 376D IPC & Section 6 of the POCSO Act were deleted), registered at Police Station Tauru, District Nuh.

The FIR was registered at the behest of the complainant, who is none else but father of the prosecutrix. As per FIR on 30.01.2020, the prosecutrix aged about 14 years had gone out to fetch wood in the village.

When she did not turn-up for a long time, her search was made in the village. However, even after making lot of efforts, the complainant did not

find the whereabouts of the prosecutrix. On 31.01.2020 at about 1.00 PM, the complainant came to know that the accused have confined his daughter in their motor room in the fields. When the complainant went to the spot, he found his daughter present there. The prosecutrix disclosed that the petitioner abducted her from the way and confined her in their motor room in the fields, where petitioner and Mustakim have raped her turn by turn. The accused threatened the prosecutrix that in case she will tell anybody about this incident, they will kill her.

Learned counsel for the petitioner has argued that the petitioner is in custody since 25.03.2020 and the allegations against the petitioner are false. Even during the investigation, police has found the other co-accused Mustakim innocent. There is no medical evidence so as to substantiate the case of the prosecution that rape was ever committed upon the prosecutrix.

Learned counsel for the complainant has argued that the prosecutrix in the case is a minor girl and in her statement recorded under Section 164 Cr.P.C., she has specifically stated that it is the petitioner who has raped her, whereas the other co-accused Mustakim was standing outside, so as to guard the petitioner in the commission of offence.

Learned State Counsel does not dispute the custody period of the petitioner. However, she submits that the prosecutrix being minor, it is for the accused to prove his innocence as in the statement recorded under Section 164 Cr.P.C., she has specifically named the petitioner.

Heard learned counsel for the parties.

Petitioner is in custody since 25.03.2020. The FIR, in question, was lodged at the behest of the complainant, who is none else but father of the prosecutrix and it is on the basis of disclosure made by the prosecutrix

to the complainant, the present FIR has been registered. In the initial version, the complainant has stated that it is the petitioner and co-accused Mustakim, who have committed rape upon the prosecutrix, whereas in her statement recorded under Section 164 Cr.P.C., the prosecutrix has named the petitioner with the allegation that the petitioner has committed rape upon her and the other co-accused Mustakim was standing outside, so as to guard the petitioner in the commission of offence. There is no medical evidence, so as to substantiate the allegation of commission of rape upon the prosecutrix. Since, there is variation in the initial version on the basis of which FIR has been registered and in the statement recorded under Section 164 Cr.P.C. by the prosecutrix, this Court finds that culpability of the petitioner is yet to be established during the course of trial. Challan has been presented, charges have been framed, but no witness has been examined in the case. Moreover, in view of prevailing situation of COVID-19 epidemic, trial is not likely to be concluded in the near future. 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 adequate bail bonds/surety bonds to the satisfaction of trial Court/Duty Magistrate.

The observations made hereinabove shall not be construed as an expression on the merits of the case and the trial Court shall proceed with the trial independently without being influenced by the order of bail passed by this Court.

October 06, 2020
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(HARI PAL VERMA)
JUDGE

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