

204.

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

CRM-M-32566-2019

Date of decision: 07.01.2020

JAGBIR

... Petitioner

versus

STATE OF HARYANA

.... Respondent

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Kunal Dawar, Advocate,
for the petitioner.

Ms. Gaganpreet Kaur, AAG, Haryana.

HARI PAL VERMA, J.(Oral)

Petitioner has filed this petition under Section 439 Cr.P.C. for grant of regular bail, pending trial, in FIR No.36 dated 04.05.2019 registered under Sections 376, 354-A, 452, 506 of IPC (Section 25 of Arms Act, 1959 deleted during investigation and Sections 328, 377 of IPC added lateron) at Police Station Women, Palwal, District Palwal.

The aforesaid FIR was registered at the behest of the prosecutrix. As per the FIR, the prosecutrix, a married lady, is a mother of two sons and a daughter. The eldest son, being 23 years of age, is a bus driver; the younger son, aged about 20 years, is a taxi driver and the husband of the prosecutrix is a truck driver. The prosecutrix had taken the house of the accused on rent @ Rs.4,000/- per month in June, 2018. It being a two rooms house, one room was rented out to the prosecutrix and her family and the other room was locked by the petitioner-accused after keeping some of

his goods in it. He used to visit the house in order to check the RO water purifier. As per the prosecutrix after about 15-20 days of taking the house on rent, the accused started keeping an evil eye upon her and on the last day of July, 2018, he came at her house, sat in the *veranda* and asked her for water. The prosecutrix offered water to him and when she started going back, the petitioner caught her forcibly from behind and dropped her on the bed and starting forcing upon her and when she objected and raised alarm, he put some revolver type thing upon her temple and extended threat to kill her in case she raised alarm. The prosecutrix got frightened and in this manner, the petitioner committed rape upon her. Thereafter, on every second or third day, the petitioner used to visit her house and used to commit rape upon her and during this period, he also prepared obscene video on his mobile. In August, 2018, the petitioner got repaired the floor of the house after taking Rs.16,000/- from the prosecutrix. The prosecutrix has been paying rent and electricity bill continuously to the petitioner, but he has not issued any receipt acknowledging the rent. On 02.05.2019 at about 11.30, the petitioner along with his mother came to her house and caught hold the hand of her daughter and threatened that in case she did not hand over her daughter to him in three days, he would kill her family members.

Learned counsel for the petitioner has argued that the petitioner is in custody since 04.05.2019. There being ample opportunities given to the prosecutrix to depose in the case, she is not coming forward to get herself examine, for which, even bailable warrants have also been issued to her. She has already been given as many as three opportunities. Moreover, the present FIR has been registered after a delay of around 10 months from

the date of alleged incident.

Learned State counsel, on instructions from ASI Shobha, does not dispute the custody and the fact that the prosecutrix has been issued bailable warrants so as to get herself examined in the case. However, she submits that the statement of daughter of the prosecutrix under Section 164 Cr.P.C. has been recorded wherein she has supported the alleged incident whereby the petitioner caught hold of her hand in order to outrage her modesty.

I have heard learned counsel for the parties.

Petitioner is in custody since 04.05.2019, is not in dispute and the prosecutrix has been given three opportunities to get herself examined which include the issuance of bailable warrants in the case. In the manner, the prosecutrix is delaying the trial. Moreover, the present FIR has been registered after a delay of about 10 months from the date of alleged incident. The medical evidence nowhere support the case of the prosecution as nothing has been brought on record to substantiate the allegations made by the prosecutrix. Since the trial is not likely to be concluded in the near future and the prosecutrix is not coming forward to depose in the case, 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.

It is made clear that the petitioner shall not extend any threat and shall not influence any prosecution witness in any manner directly or indirectly.

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

07.01.2020
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Whether speaking/reasoned?	Yes/No
Whether reportable?	Yes/No