

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

228

**CRM-M-38411-2020
Date of decision: 27.11.2020**

AARTI

.....Petitioner

Versus

STATE OF HARYANA

.....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Yashveer Kharb, Advocate
for the petitioner.

Mr. Manish Bansal, DAG, Haryana
for the respondent-State.

ARUN KUMAR TYAGI, J (ORAL)

(The case has been taken up for hearing through video conferencing.)

The petitioner has filed the present (first) petition under Section 439 of the Code of Criminal Procedure, 1973 (for short, “the Cr.P.C.”) for grant of regular bail in case FIR No. 446 dated 05.06.2020 under Sections 6 and 14 of the Protection of Children from Sexual Offences Act, 2012 and Section 506 of the Indian Penal Code, 1860 (for short, “the IPC”) registered at Police Station Model Town, District Panipat to which Section 376-AB of the IPC was added later on.

The above said FIR was registered on statement of father of the victim girl child (hereinafter referred to as the prosecutrix). In his statement, father of the prosecutrix alleged that the prosecutrix, who is aged about 12 years, informed him that about one month back the prosecutrix had gone to the house of Sudesh for playing where Sudesh was not present and her son-in-law Mandeep was present. On finding

the prosecutrix alone, co-accused Mandeep committed wrong act with his daughter. The occurrence was recorded in mobile phone by transgender Chhoti. He took the video from Chhoti on his mobile phone and would submit the same in CD. During investigation statement of the prosecutrix was recorded under Section 164 of the Cr.P.C. In her statement, the prosecutrix alleged that she was called to her house by the petitioner on the pretext of offering tea and when co-accused Mandeep committed rape she did not come to her rescue on hearing her cries. On completion of investigation the police filed challan against the petitioner and her co-accused Mandeep and transgender Chhoti.

Pursuant to supply of advance copy of the petition, learned State Counsel has appeared and opposed the petition. However, no reply has been filed by the respondent-State.

I have heard learned Counsel for the petitioner and learned State Counsel and gone through the record.

Learned Counsel for the petitioner has argued that the petitioner has been falsely implicated in this case. There is unexplained and inordinate delay of more than one month in lodging of the FIR. The petitioner was not named in the FIR and has been subsequently implicated on the basis of statement of the prosecutrix. There are material contradictions in the prosecution version qua the role attributed to her. Co-accused Mandeep, who is alleged to have raped the prosecutrix, has been granted regular bail by a Co-ordinate Bench of this Court vide order dated 28.10.2020 passed in CRM-M-30435-2020. The petitioner is in custody since 15.08.2020. The trial is likely

to take long time due to restrictions imposed to prevent the spread of COVID-19. Therefore, the petitioner may be granted regular bail.

On the other hand, learned State Counsel has argued that the petitioner committed serious offence by calling the prosecutrix from her house and facilitated her rape by her husband Mandeep by leaving her in his company. The petitioner does not deserve the grant of regular bail. Therefore, the petition may be dismissed.

Keeping in view the facts and circumstances of the case, nature of accusation and role attributed to the petitioner who was not named in the FIR and has been subsequently implicated in statement of the prosecutrix under Section 164 of the Cr.P.C., parity with main accused Mandeep who has been granted bail by Co-ordinate Bench and the fact that trial is likely to take long time due to restrictions imposed to prevent the spread of COVID-19 but without commenting on merits of the case, I am of the considered view that the petitioner deserves the concession of regular bail.

Therefore, the petition is allowed and the petitioner is ordered to be released on regular bail on furnishing of requisite personal and surety bonds to the satisfaction of the trial Court/Chief Judicial Magistrate concerned.

27.11.2020

kavneet singh

**(ARUN KUMAR TYAGI)
JUDGE**

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No