

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

Criminal Misc. No.M-37588 of 2019

Date of Decision: 21.01.2020

Babbu @ Baba

...Petitioner (s)

Versus

State of Haryana

...Respondent(s)

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

Present:- Mr. Ajay Arora, Advocate
for the petitioner.

Ms. Gaganpreet Kaur, AAG, Haryana.

HARI PAL VERMA, J. (Oral)

Prayer in the present petition filed under Section 439 of the Code of Criminal Procedure, 1973 is for grant of regular bail to the petitioner in case FIR No.39 dated 27.08.2018 under Sections 366, 376(2)(n), 506, 420 IPC registered at Police Station Women, Sirsa.

The aforesaid FIR was registered on the basis of communication received by the police by post. As per the FIR, the prosecutrix is a married lady, having two children. She earns her livelihood by doing labour work. Her husband was ill and therefore, on the asking of somebody, the prosecutrix called the petitioner to her house,

where *havans* were performed four times and every time, the petitioner used to charge Rs.5,000/- from the complainant. The petitioner gave a *tabeez* to the complainant and asked her to get it dissolved in water and gave that water to her husband and he will be fine after that. About 8-10 days back, while the complainant was going to her parental house, the petitioner gave her lift on his motorcycle, telling her that he will drop her at her parents' house. He also gave a mobile phone to her. But the petitioner instead of taking her to her parental house at Village Otu, took her to Chopta, where he committed wrong act with her. He threatened her that in case she will disclose this fact to anybody, he will kill her. She stayed in her parental house for 4-5 days and thereafter, returned back to her matrimonial home, where she disclosed this fact to her husband.

Learned counsel for the petitioner has argued that the alleged incident has taken place on 16.08.2018 whereas the present FIR was registered on 27.08.2018 and thus, there is delay of 10 days in registering the FIR. She was subjected to medical examination but the allegation of rape has not been established. He has further argued that out of the total 21 witnesses cited by the prosecution, only 7 witnesses have been examined. In the event of the petitioner being admitted on bail, he is not going to influence the complainant, as she has already been examined in the case. The petitioner is in custody since 29.08.2018.

Learned State counsel, on instructions from the IO, does not dispute the custody of the petitioner. However, she submits that the prosecutrix was subjected to medical examination. However, no mark of injury was found present on her person.

I have heard learned counsel for the parties.

The prosecutrix is a married lady and no marks of injuries have been pointed out on her person. Moreover, she got the FIR in question registered after more than 10 days of the incident, as the alleged incident had taken place on 16.08.2018 whereas the present FIR was registered on 27.08.2018. Though earlier also, the petitioner had filed a petition i.e. CRM-M-9795-2019 *Babu Ram @ Babbu Vs. State of Haryana* seeking regular bail and this fact has not been incorporated in this petition and on this score, the present petition is liable to be dismissed, however, considering the fact that CRM-M-9795-2019 was dismissed as withdrawn on 07.03.2019 and thereafter, sufficient time has elapsed, this Court is not inclined to dismiss the present petition on this score.

Considering the fact that the petitioner is in custody since 29.08.2018 and trial in the case is not likely to be concluded in near future, as only 7 prosecution witnesses have been examined so far out of the total 21 witnesses cited by the prosecution and no useful purpose would be served to keep the petitioner in custody, this Court deems it appropriate to release the petitioner on regular bail.

Accordingly, the present petition is allowed and the petitioner is admitted on regular bail, subject to furnishing of his bail bonds/surety bonds to the satisfaction of trial Court.

However, the petitioner is burdened with costs Rs.15,000/- for not disclosing the fact of his filing earlier petition. The said costs shall

be paid by the petitioner in the Lawyers Welfare Fund of Punjab and Haryana High Court Bar Association within a week from today.

However, it is made clear that the observation made hereinabove shall not be construed as an expression on the merits of the case.

January 21, 2020
AK

(HARI PAL VERMA)
JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No