

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

Criminal Misc. No.M-43304 of 2019 (O&M)

Date of Decision: 27.01.2020

Ashutosh Kataria @ Ashu

...Petitioner (s)

Versus

State of Haryana

...Respondent(s)

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

Present:- Mr. Gourave Bhaiyya, Advocate  
for the petitioner.

Ms. Gaganpreet Kaur, AAG, Haryana.

Mr. Neeraj Goel, Advocate  
for the complainant.

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**HARI PAL VERMA, J. (Oral)**

**CRM-35202-03-2019:**

The applications are allowed, as prayed. The document  
Annexure P-6 is taken on record subject to all just exceptions.

**Criminal Misc. No.M-43304 of 2019:**

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.284 dated 29.05.2019 under Section 8 POCSO  
Act and Section 34 IPC registered at Police Station Sector 9A, District  
Gurugram.

The aforesaid FIR was registered at the behest of mother of  
the prosecutrix. As per the FIR, the complainant was a tenant in Gurugram

and has three children, including one daughter, who is victim in the case. On 28.05.2019, the victim received a phone call from her friend Aman (co-accused), upon which, she went to meet him near Shani Mandir. Aman told her that it was his birthday and they should celebrate it. Accordingly, the daughter of the complainant accompanied him in his car. He took her to Garhi Harsaru. Ashu, the petitioner, who is friend of Aman, was also sitting in the car. They both kissed the victim and rubbed her breast. When the victim returned back to home, she informed about this incident to the complainant. Thereafter, the prosecutrix appeared before the Magistrate and her statement under Section 164 CrPC was recorded on 29.05.2019, in which, she supported the FIR version.

However, during trial, when the prosecutrix was examined as PW-5, she improved her version, as recorded in the FIR. In her statement, which was recorded on 18.09.2019, she stated that she was taken to a secluded place, where there was not much traffic. Initially, Ashu (petitioner) was driving the car but after some time, he told Aman (co-accused) to drive the vehicle, as he wanted to sit on rear seat. The petitioner sat besides the prosecutrix and forcibly removed her clothes and committed rape upon her. Thereafter, the petitioner was told to drive the vehicle and thereby, co-accused Aman also raped her. During this time, her video was also prepared by the petitioner. Then, they left her at that place, from where, she was taken to the Police Station, where she narrated the whole occurrence. The medical examination was refused by her out of fear. She was told that only her clothes be given to the police in order to bring out the real facts, upon which, she handed over her clothes to the

police. During her examination, she had questioned the role of the Investigating Officer also. Thereafter, on 16.12.2019, when the prosecutrix was recalled, she was declared hostile. In this manner, she has not supported the case of the prosecution.

Noticing the fact that the petitioner is in custody since 29.05.2019, though interim bail was granted to him for one week, vide order dated 29.11.2019, which order was further extended vide order dated 09.12.2019, as a compromise was effected between the parties, this Court finds that the order, whereby the petitioner was released on interim bail, deserves to be made absolute.

Accordingly, the present petition is allowed and the interim bail granted to the petitioner vide order dated 29.11.2019, which was subsequently extended vide order dated 09.12.2019 is made absolute, which shall continue during pendency of the trial.

However, it is made clear that the observation made hereinabove shall not be construed as an expression on the merits of the case. The Trial Court shall analyse the statements of the parties without being influenced by any observations made in this order and shall act in accordance with law.

January 27, 2020  
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( HARI PAL VERMA )  
JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No