

219.

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

CRM-M-48785-2019

Date of decision: 12.02.2020

PARDEEP

... Petitioner

versus

STATE OF HARYANA

.... Respondent

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Devinder Singh, Advocate,
for the petitioner.

Ms. Gaganpreet Kaur, AAG, Haryana.

HARI PAL VERMA, J.(Oral)

Prayer in the present petition filed under Section 439 Cr.P.C. is for grant of regular bail to the petitioner in case FIR No.48 dated 01.04.2019 registered under Sections 363/366 of IPC (Sections 365/452/376-D/506/34 of IPC and Section 6 of POCSO Act, 2012 added lateron) at Police Station Behal, District Bhiwani.

As per the FIR, in the night of 31.03.2019, at about 10:11 PM, the prosecutrix has gone somewhere from home. During her search, it was doubted that the petitioner, who is otherwise a neighbour of the complainant and is unmarried, has ran away alongwith the prosecutrix while enticing her. Though initially the FIR was registered under Sections 363 and 366-A of IPC, but it is thereafter on the basis of the statement of the prosecutrix recorded under Section 164 Cr.P.C., the other offences including the offence under Section 376 IPC and Section 6 of POCSO Act, as stated in the FIR above, were added in the case.

Learned counsel for the petitioner has argued that it is on the basis of the statement of the prosecutrix recorded under Section 164 Cr.P.C., the other two accused were also named in the FIR. However, during investigation, those accused were found innocent. There is no medical evidence to support the case of the prosecution that she was ever subjected to rape. Moreover, the prosecutrix in the case has already been examined and trial will take long time as three more witnesses are yet to be examined. In the absence of medical evidence, the prosecution case is not going to be proved and the petitioner would be acquitted in the case. Petitioner is in custody since 15.04.2019.

Learned State counsel, on instructions from HC Vijender, does not dispute the custody. However, she submits that the prosecutrix in the case was examined and in the medical examination, it was found that hymen was ruptured. So, the possibility of commission of rape cannot be ruled out.

I have heard learned counsel for the parties.

Petitioner is in custody since 15.04.2019. In the FSL report, it has been reported that human semen was detected on exhibit-4 (underwear). However, semen could not be detected on rest of the exhibits as mentioned in the description of article(s) contained in the parcels. Exhibit-4 is a sealed cloth parcel of the accused.

In view of FSL report and the fact that the petitioner is in custody since 15.04.2019 and the prosecutrix has already been examined 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 witnesses 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

12.02.2020
sanjeev

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