

229.

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-1040-2020

Date of decision: 16.01.2020

RAJPAL

... Petitioner

versus

STATE OF HARYANA

.... Respondent

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Tushar Gautam, Advocate,
for the petitioner.

Ms. Priyanka Sadar, AAG, Haryana.

HARI PAL VERMA, J. (Oral)

Prayer in this petition filed under Section 439 Cr.P.C. is for grant of regular bail to the petitioner in case FIR No.210 dated 21.07.2019 registered under Sections 328, 376, 506 of IPC at Police Station Farrukhnagar, District Gurugram.

The aforesaid FIR was registered at the behest of the prosecutrix. As per the FIR, the prosecutrix was doing *beldari* work with the petitioner, a Contractor, who is in her distant relations, for the last about 7-8 years. She had gone to the house of the petitioner to take her balance wages. However, on reaching the house, the prosecutrix was informed by the wife of the petitioner that he (petitioner) had gone to Village Joniyawas for some work. After verifying the address of the petitioner, she had gone to Village Joniyawas and accordingly, she reached in the house of Ved Pal Yadav where she met with the petitioner and another boy. While she was

talking with the petitioner, the other boy left the place. On the pretext of showing her the house allegedly constructed by the petitioner, he took her to the first floor of the house where he started molesting her and committed rape on her by force and under threat. The petitioner had already consumed liquor and the prosecutrix was also made to consume liquor. However, when she regained consciousness, she found her *salwar* open and felt that she was sexually ravished by the petitioner. In this manner, she reported the matter to the police.

Learned counsel for the petitioner has argued that the petitioner is in custody since 22.07.2019. The prosecutrix is a married lady. The FSL/DNA report in the case has not yet been received. Merely because the MLR findings are suggestive of the fact that the prosecutrix had been sexually assaulted recently, cannot be used against the petitioner more particularly when the prosecutrix is a married lady. He has further argued that in fact the dispute between the petitioner and the prosecutrix is as regard the payment of wages and it is for this reason, she has falsely implicated the petitioner.

Learned State counsel does not dispute the custody. However, she submits that in her statement recorded under Section 164 Cr.P.C., she has supported the case, though she is yet to be examined in the trial. The FSL/DNA report is awaited.

I have heard learned counsel for the parties.

Petitioner is in custody since 22.07.2019. No doubt, the prosecutrix was medico legally examined in the case on the same day of the alleged occurrence and the MLR findings are suggestive of the fact that the

prosecutrix had been sexually assaulted recently, but the prosecutrix being a married lady and staying with her husband, the possibility of her sexual indulgence with her husband cannot be ruled out. In any case in the absence of FSL/DNA report, which is awaited, it cannot be strictly established that the petitioner has committed sexual assault upon the prosecutrix. The prosecutrix has not been examined in the case. As against the total 15 witnesses cited by the prosecution, only 2 witnesses have been examined, who are stated to be formal witnesses. In this manner, trial will take sufficient long time. Thus, 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

16.01.2020
sanjeev

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