

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

CRM-M-424 of 2021.

Decided on:- January 13, 2021.

Ajay Kapoor alias Kittu.

.....Petitioner.

Versus

State of Punjab.

.....Respondent.

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

Present:- Mr. Vipin Mahajan, Advocate
for the petitioner.

Mr. M.S. Nagra, A.A.G., Punjab.

Mr. Ravi Malhotra, Advocate
for the complainant.

HARI PAL VERMA, J. (Oral)

The petitioner has filed present petition under Section 439 Cr.P.C. seeking regular bail in FIR No.7 dated 07.04.2018 under Sections 376, 376-D and 292 read with Section 34 IPC and Section 67 of the Information Technology Act, 2000 registered at Police Station Dhar Kalan, District Pathankot.

Learned counsel for the petitioner refers to the police proceedings attached with the petition as Annexure P-1 to contend that the FIR was initially registered under Section 376 IPC and during investigation, no evidence has come against the petitioner. Rather, the offence under Section 376 IPC was made out against co-accused Harish Kumar alone. He further

refers to the photograph attached with the petition, wherein the prosecutrix is noticed in the company of co-accused Harish Kumar.

He has further submitted that the petitioner is in custody since 11.11.2020. Initially, the petitioner was found innocent during investigation. However, he has been summoned to face trial on the basis of an application moved by the prosecution under Section 319 Cr.P.C., as the prosecutrix has deposed in her examination-in-chief recorded before the trial Court on 19.11.2019 that the petitioner has committed rape upon her against her wishes in a moving vehicle along with other co-accused.

Learned State counsel, though does not dispute the custody of the petitioner, but submits that the allegations levelled against the petitioner are serious in nature and, therefore, he is not entitled for bail.

Learned counsel for the complainant submits that the police has wrongly found the petitioner innocent during the investigation. The prosecutrix in her examination-in-chief has deposed before the trial Court against the petitioner.

I have heard learned counsel for the parties.

There is no dispute that the petitioner is in custody since 11.11.2020. During the course of investigation, the petitioner was not found involved in the case and the Challan was presented against co-accused Harish Kumar, whereas other co-accused Rohit Kumar @ Bablu was declared as a proclaimed offender.

Noticing the fact that it is on the basis of an application under Section 319 Cr.P.C., the petitioner was summoned to face trial and thereafter, was arrested in the case, this Court finds that the culpability of the petitioner

is yet to be established during the trial, which is not likely to be concluded in near future. Therefore, no useful purpose would be served by detaining the petitioner in further custody.

Accordingly, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing adequate bail bonds and surety bonds to the satisfaction of learned trial Court.

The observations made hereinabove shall not be construed as an expression of opinion on the merits of the case and the trial Court shall decide the case without being influenced with these observations in any manner.

January 13, 2021
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No